

THE FOLLOWING MEMOS HAVE
BEEN SCANNED WITHOUT EXHIBITS
FOR THE HEARINGS TO BE
CONDUCTED BY THE BENTON
COUNTY BOARD OF ADJUSTMENT
ON DECEMBER 2, 2010 AT 7 P.M. -
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 AT
736-3086 - TRI-CITIES
OR
786-5612 - PROSSER
OR
EMAIL TO
planning.department@co.benton.wa.us

CONSENT AGENDA ITEMS:

EXTENSION REQUESTS

CUP 08-07 VERMULM

SP 06-16 – BRANCHES/VINES

SP 8-08 – MAYFLOWER METALS

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: OCTOBER 20, 2010

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: BENTON COUNTY PLANNING DEPARTMENT

RE: CONDITIONAL USE PERMIT – CUP 08-07 – VERMULM

The Benton County Board of Adjustment on September 4, 2008, approved a conditional use permit for the operation of a non-agricultural accessory use to buy, sell, store and transport baled hay and straw including the parking of up to ten trucks and trailer units, and five loading equipment units. The site is located a 22202 Hinzerling Road in the Southeast Quarter of Section 22, Township 9 North, Range 24 East, W.M. The action came before the Board again on November 5, 2009 for a one-year extension request, which was granted.

The applicant presented the enclosed letter requesting another extension in order to satisfy the requirements of the Health Department pertaining to their new water system on site. The other remaining conditions of approval have been satisfied.

The Benton County Board of Adjustment will need to make a decision with regards to the granting of denying of the one-year extension request.

Enclosure: Letter received from the applicant 10/20/2010

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: OCTOBER 20, 2010

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: BENTON COUNTY PLANNING DEPARTMENT

RE: SPECIAL USE PERMIT – SP 06-16 – BRANCHES/VINES – MARY SMITH

The Benton County Board of Adjustment on September 7, 2006 approved a special use permit for the operation of an agriculturally based retail produce and gift shop to be located at 5211 E Jacobs Road, Benton City.

The applicant contacted the Benton County Planning Department on October 5, 2010 and stated that she would be withdrawing any further development of this special use permit.

The Board of Adjustment will need to make a motion to accept the applicant's request to withdraw this special use permit.

The applicant's letter is attached to this memo.

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: OCTOBER 20, 2010

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: BENTON COUNTY PLANNING DEPARTMENT

RE: SPECIAL USE PERMIT - SP 08-08 - MAYFLOWER METALS - ALAN FINCH

The Benton County Board of Adjustment on September 4, 2008 approved a special use permit to amend SP 87-15 to add 2650 square feet to the existing 1625 square feet building and to allow for the recycling of junk vehicles. In addition, the Board approved a one-year extension on this application in order to allow the applicant to complete the water storage tank and office. The site is located at 139406 W Johnson Road in the Southwest Quarter of Section 26, Township 9 North, Range 24 East, W.M.

The applicant presented a letter to the Benton County Planning Department on October 12, 2010 requesting another year extension request with regards to the installation of the water storage tank. The applicant stated in the letter that he would no longer be pursuing to enlarge the existing 1625 square foot building to 2650 square feet for the office. If in the future he decides to expand the office he will go through the proper permitting process.

The Board of Adjustment will need to review the applicant's request for another extension and make a motion whether to grant or deny the extension request.

The applicant's letter is attached to this memo for the Board's review.

Enclosure:
Applicant's letter dated October 12, 2010

UNFINISHED BUSINESS

SP 10-09 – PATRICK/KORENE REDMAN

VAR 10-02 – NICKERSON

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

BOAH 3.1

DATE: OCTOBER 22, 2010

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: BENTON COUNTY PLANNING DEPARTMENT

RE: SPECIAL USE PERMIT – SP 10-09 – PATRICK/KORENE REDMAN

The Benton County Board of Adjustment at their public hearing conducted on September 2, 2010 made a motion to continue Special Use Permit – SP 10-09 to the December 2, 2010 in order to allow the applicant time to obtain approval from the Washington State Department of Health with regards to his water system.

The Board also informed the applicant that if he had obtained approval prior to the December 2, hearing date to inform the Benton County Planning Department to be placed on the Board's agenda, prior to December 2, 2010.

Enclosed is a copy of a letter from the Benton Franklin Health District, which states: I just received notification from WA Department of Health that the Redman Recycling Water System has been approved. The system ID# is AC 592D. Since their water system is approved, their sewage disposal system is now approved, and they have completed our requirements."

The Board of Adjustment will need to review this special use permit for decision making at the November 4, 2010 hearing.

Enclosure:

Email from Jeri Randle – BFHD dated September 28, 2010 BOAH 3.2

ON-SITE SEWAGE DISPOSAL SYSTEM CONSTRUCTION INSPECTION REQUEST – BOAH 3.3

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: October 22, 2010

To: Benton County Board of Adjustment

From: Benton County Planning Department

Re: Variance VAR 10-02 – Darrell/Nolea Nickerson

Enclosed is an email from the applicant stating that he would be withdrawing his variance request VAR 10-02 from public hearing with the Board of Adjustment. He may at a later date apply for another variance.

The Board of Adjustment will need to make a motion withdrawing this action as requested by the applicant.

Enclosed is the applicant's letter dated October 22, 2010.

NEW BUSINESS:

VARIANCE REQUEST – VAR 10-03 –

DARRELL/JOLEA NICKERSON

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

BOA 1.1

MEMO DATE: NOVEMBER 17, 2010
HEARING DATE: DECEMBER 2, 2010
TO: BENTON COUNTY BOARD OF ADJUSTMENT
FROM: BENTON COUNTY PLANNING DEPARTMENT
RE: VARIANCE APPLICATION – VAR 10-03

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

SPECIFIC REQUEST: The applicant is requesting a variance to BCC 11.08.040(a) for a five (5) foot reduction of the required ten (10) foot side yard setback, and a variance from BCC 11.12.030 for a 20 foot reduction from the required 55 foot front yard setback from the centerline of the county road for the construction of a garage.

BACKGROUND:

Site Location: The site is located at 1244 N. Neal 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 surrounding by the City 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 11.08.030 FRONT YARD SETBACK REQUIREMENTS:

- (a) There shall be a front yard setback of 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 any portion thereof shall be nearer to the front property line than the distance indicated in the preceding subparagraph (a), except eaves, cornices, belt course, and similar ornamentations may project over a front yard not more than two (2) feet. Steps, terraces, platforms, and porches having no roof covering and being not over forty-two (42) inches in height may extend into a front yard.
- (c) There shall be a front yard setback of at least twenty-five (25) feet from any access and/or combined access and utility easement adjacent to or within the property.

6 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/applicants are Darrell & JoLea Nickerson, 1244 N. Neal Loop, Kennewick, WA 99336.
2. The applicants are requesting approval for a variance to BCC 11.08.040(a) for a reduction of 5 foot from the required ten (10) foot side yard setback and a Variance from BCC 11.12.030 of 20 feet from the front yard setback of 55 feet from centerline of the county road for the construction of a garage addition leaving a 30 foot front yard setback from the centerline of the county road.
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 10-03 was submitted to Benton County on November 4, 2010 and was determined a complete application for processing on November 5, 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 10-03 was published on November 18, 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 December 2, 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 Benton Franklin Health District stated: (1) The dwelling is served by an approved public water supply in accordance with WAC 246-290. (2) The dwelling is 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 for the intended use. (3) Adequate replacement area must be available and must remain unencumbered in the event of system failure.
9. The City of Kennewick had the following comments: The 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 City of Kennewick would like to see a 20-foot minimum setback from the property line to the garage doors so that if cars are parked in front of the garage they do not block the street."
10. The applicant is asking for a side and front 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.

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 10-03 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 10-03 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 side yard variance is limited to a 5-foot reduction of the required 10-foot side yard setback for the garage addition. A 5-foot setback would be compatible with the City of Kennewick's pre-zone of Residential, Low for the neighborhood.
6. A 20-foot minimum setback from the front property line to the garage doors is established so if cars are parked in front of the garage they do not block the street."
7. That the Benton-Franklin Health District's requirements continue to be met before and after the construction of the residence. An existing system evaluation has been performed It appears that a 100% replacement area has been established in the event of a system failure

SPECIAL USE PERMIT – SP 10-18

PATRICIA A DOWNEY-EAGAN

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

BOAM 1.1

MEMO DATE: NOVEMBER 23, 2010
MEETING DATE: DECEMBER 2, 2010
TO: BENTON COUNTY BOARD OF ADJUSTMENT
FROM: BENTON COUNTY PLANNING DEPARTMENT
RE: SPECIAL PERMIT APPLICATION – SP 10 -18

APPLICANTS/

PROPERTY OWNERS: Patricia Downey-Eagan
Stephen Eagan
27505 S. 875 PR SE
Kennewick, WA 99338

SPECIFIC REQUEST: The applicants, Patricia Downey-Eagan & Stephen Eagan, are requesting a special use permit for the operation of commercial dog kennel for the keeping of up to 5 dogs that are older than six months in age.

BACKGROUND:

Site Location: The site is located on a developed site at 27505 S. 875 PR SE in Section 21, Township 8 North, Range 28 East, W.M.

Land Use: The site is currently developed with a single-family dwelling and outbuildings. The surrounding properties are developed with like uses.

Zoning: The site and surrounding properties are zoned Agricultural.

Comprehensive Plan Designation: Site and surrounding areas are "Rural Lands 5".

State Environmental Policy Act: Categorically exempt from the requirements of the Washington State Environmental Policy Act, under WAC 197-11-800(13).

APPLICABLE DEVELOPMENT REGULATIONS:

1. Benton County Code (BCC) Section 11.16.010 (o) states the following
"(o) 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: " Subsection (1) under 11.16.010(o) states:

"(1) Any use not otherwise permitted by BCC 11.16.010(a) through BCC 11.16.010(n) that is permitted in the suburban district outright or by review and approval by the Planning Director or by the Board of Adjustment."

BCC Section 11.12.010 (j) (In the Suburban District Section) states:

"(j) 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:"

Subsection (8) under BCC 11.12.010(j) states:

"(8) Commercial kennels or small animal farms, poultry or squab farms, subject to such restrictions as the County Board of Adjustment deems necessary."

2. BCC Section 11.16.010(h) (In the Agriculture 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."

3. BCC 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 Section 2.

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.

4. 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/property owners are Patricia A. Downey-Eagan/Stephen Eagan 27505 S 875 PR SE – Kennewick, WA 99338
2. The applicants are requesting approval of a Special Permit Application for the operation of a commercial dog kennel for up to five dogs on a 1.23-acre parcel.
3. The application for SP 10-18 was submitted to Benton County on November 3, 2010, and declared complete on November 5, 2010.
4. The agency review letter for Special Permit 10-18 was mailed out on November 5, 2010.
5. The notice for the Benton County Board of Adjustment Open Record Hearing was published on November 18, 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 December 2, 2010.
6. Special Permit Application SP 10-18 is categorically exempt from the requirements of the Washington State Environmental Policy Act, under WAC 197-11-800(13).
7. The site is currently developed with a single-family dwelling and outbuildings. The surrounding properties are mostly rural residential and limited agricultural activities.
8. The site and surrounding properties are zoned Agricultural.
9. The Benton County Comprehensive Plan designated the site and surrounding areas as "Rural Lands 5".
10. The Benton-Franklin Health District requires the following:
 - The dwelling will be served by a single family well or an approved public water supply in accordance with WAC 246-290.
 - The dwelling will be 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 Washington State Department of Ecology should be contacted regarding disposal of dog waste, which must not be discharged to the sewage disposal system.
11. This application was routed to, but had no comments were received from the following agencies: Benton County Fire District #1, Benton Clean Air Authority, Washington State Department of Health, and the Washington State Department of Ecology.
 12. The applicants are proposing to have up to five dogs. The application does not address where the dogs will be kept when they are not located in the area designated on the site plan during the day or at night. Typically, the Board of Adjustment has approved special permit applications for dog kennels when the animals are housed in kennels indoors with sheetrock siding to minimize noise and with proper ventilation. For sanitary purposes, the housing of dogs inside of residences is not permissible. The location of the outside dog area is located adjacent to the private road that is used to access the site and other houses in the area. It appears from the site plan and aerial photo, that there are some trees located around the dog area. However, placing the dogs in close proximity to the access road will increase the likelihood of dog barking because of the traffic on the private road.
 13. Three of the dogs currently at the location have been designated as potentially dangerous dogs. BCC 2.20.010 (c) defines a potentially dangerous dog as:
 - “(c) "Potentially dangerous dog" means any dog that when unprovoked:
 - (1) Inflicts bites on a human or a domestic animal either on public or on private property;
 - (2) chases or approaches a person upon the streets, side walks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or otherwise to threaten the safety of humans or domestic animals; or
 - (3) chases or approaches a person upon private property other than the owners property in a menacing fashion or in an apparent attitude of attack; provided, however, that dogs shall not be declared potentially dangerous if the threat, injury, or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.
 14. The Special Use Permit submittal was the result of Code Enforcement and Sheriff action due to a report of dangerous dogs located on site.
 15. Comment letters from the Benton County Sheriffs Office and from adjoining property owners have been received and are attached to this memo.
 16. The applicants did not address in their application how waste from the animals would be handled. Any waste must be disposed of according to state and local laws.

17. The special permit application does not request any signs on the property, and will have no non-resident employees.
18. The proposed use could 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 Agricultural 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. As stated above three of the dogs to be located at this site have been designated as potentially dangerous dogs, which means that these dogs may when unprovoked inflict bites on a human or a domestic animal and/or chase persons.
19. The proposed use as shown in the application 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 Unclassified 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.
20. The proposed use as shown in the application would be supported by adequate service facilities. The proposed use would not adversely affect public services to the surrounding area. There is no evidence to support that the site would not be adversely affected. The residence on site is served by all the necessary services.
21. The proposed use as shown in the application could hinder or discourage the development of permitted uses on neighboring properties in the Agricultural zoning district as a result of the location on the property of the dogs themselves.

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;

CONDITIONS OF APPROVAL:

If the Board of Adjustment decides to approve Special Permit Application 10-18, 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. Applicants shall not conduct any of the activities within the scope of Special Permit 10-18 until the applicants are in compliance with all the conditions set forth herein. The applicants 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 applicants 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 meet the requirements sent from the Benton-Franklin Health District to the Benton County Planning Department as outlined in the November 9, 2010, letter. The applicants are to provide the Planning Department written verification that all of the Health District's requirements have been met. The applicants shall continue to meet all such requirements while Special Permit SP 10-18 is in effect.
4. The requested special permit shall not be granted for the keeping of more than 5 dogs of any age on the site. The applicants shall continue to meet all such requirements while Special Permit SP 10-18 is in effect.
5. That the dogs be kept in a kennel that is indoors with insulated walls and ceiling and sheetrock interior and concrete flooring for sanitation to minimize noise and to keep proper ventilation, i.e. heated in the winter and air conditioned in the summer. The housing of dogs inside a residence is not permissible due to sanitary conditions. The applicants shall continue to meet all such requirements while Special Permit SP 10-19 is in effect.
6. A minimum height of six (6) foot sight-obscuring fence must be constructed around the dog area and kennel housing the dogs for containment. The dog area shall be located between the existing house and the existing barn (East of the house and west of the barn. The dog area and kennel shall not be located within 150 feet of any of the property lines. The applicants shall continue to meet all such requirements while Special Permit SP 10-18 is in effect.

7. That 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 Health Department, and all other local, state and federal regulations pertinent to the special permit 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 10-18 is in effect.
8. That any waste created as a result of the special permit must be disposed of in compliance with all local, state and/or federal regulations. In this application a system must be installed on site to adequately collect and treat all of the waste generated by the animals contained on the property. The applicants shall continue to meet all such requirements while Special Permit SP 10-18 is in effect.
9. All dogs in the same enclosure at the same time must be compatible, as determined by observation. Animals with a vicious or aggressive disposition must never be placed in an enclosure with another animal, except for breeding purposes. Breeding females in heat may not be in the same enclosure at the same time with sexually mature males, except for breeding purposes. Breeding females and their litters may not be in the same enclosure at the same time with other adult dogs. Puppies under twelve weeks may not be in the same enclosure at the same time with other adult dogs.
10. Provide dogs with easy and convenient access to adequate amounts of clean food and water. Food and water receptacles must be regularly cleaned and sanitized. All enclosures must contain potable water that is not frozen, is substantially free from debris, and is readily accessible to all dogs in the enclosure at all times.
11. Provide veterinary care without delay when necessary. A dog may not be bred if a veterinarian determines that the animal is unfit for breeding purposes. Only dogs between the ages of twelve months and eight years of age may be used for breeding. Only a licensed veterinarian must euthanize animals requiring euthanasia.
12. The kennel permit will be automatically revoked upon the applicant violating any of the listed conditions of approval.

SPECIAL USE PERMIT – SP 10-19
DAVID ROBERTS/DENICE RUNYON

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

BOAM 1.1

MEMO DATE: NOVEMBER 22, 2010
MEETING DATE: DECEMBER 2, 2010
TO: BENTON COUNTY BOARD OF ADJUSTMENT
FROM: BENTON COUNTY PLANNING DEPARTMENT
RE: SPECIAL PERMIT APPLICATION – SP 10 -19

APPLICANTS/

PROPERTY OWNERS: DAVID ROBERTS & DENICE RUNYON
179803 W. JOHNSON ROAD
GRANDVIEW, WA 98930

SPECIFIC REQUEST: The applicants, David Roberts and Denice Runyon, are requesting a special use permit for the operation of commercial/breeding kennel for the keeping of up to 40 dogs that are older than six months in age.

BACKGROUND:

Site Location: The site is located at 179803 W Johnson Road, East of the intersection of Johnson Rd. and County Line Rd. in Section 31, Township 9 North, Range 24 East, W.M.

Land Use: The site is currently developed with a single-family dwelling and outbuildings. The surrounding properties are developed with like uses.

Zoning: The site and surrounding properties are zoned Unclassified. Parcels West of County Line Rd. the parcels are located in Yakima County. Properties located North of this site are zoned GMA Agriculture with the remaining area being zoned Unclassified.

Comprehensive Plan Designation: Site and surrounding areas are "Rural Lands 5". Parcels to the North are designated "Agriculture".

State Environmental Policy Act: Categorically exempt from the requirements of the Washington State Environmental Policy Act, under WAC 197-11-800(13).

APPLICABLE DEVELOPMENT REGULATIONS:

1. The Benton County Code Section 11.48.010(h) (In the Unclassified 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."
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 Section 2.

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/property owners are David Roberts and Denice Runyon, 179803 W. Johnson Rd. Grandview, WA 98933.
2. The applicants are requesting approval of a Special Permit Application for the operation of a commercial/breeding dog kennel for 40 adult dogs on a 4.82-acre parcel.
3. The application for SP 10-19 was submitted to Benton County on November 5, 2010, and declared complete on November 8, 2010.
4. Special Permit 10-19 agency review letter was mailed to various agencies on November 9, 2010.
5. The notice for the Benton County Board of Adjustment Open Record Hearing was published on November 18, 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 December 2, 2010.
6. Special Permit Application SP 10-19 is categorically exempt from the requirements of the Washington State Environmental Policy Act, under WAC 197-11-800(13).
7. The site is currently developed with a single-family dwelling and outbuildings. The surrounding properties are both residential and agricultural purposes.
8. The site and surrounding properties are zoned Unclassified. The parcels located North of Johnson Rd. is zoned GMA Agriculture.
9. The Benton County Comprehensive Plan designated the site and surrounding areas as "Rural Lands 5" with the parcels to the North being designated as "Agriculture".
10. The Benton County Department of Public Works requires that the approach onto Johnson Rd. be paved to 96-05 standards.
11. The Benton-Franklin Health District requires the following:
 - A system must be installed on this site to adequately collect and treat all of the waste generated by these animals. The facility must be 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 for the intended use.
12. The Washington State Department of Ecology has commented that on-site disposal of commercial wastes and wastewaters are illegal unless specifically approved by the Department of Ecology. This does include wastewaters sent to septic systems.

13. Benton County Sheriffs Department reported that there have been Deputy contacts made to this property in the past to deal with a reported dog attack where four of the applicant's dogs attacked a neighbor's dog. The applicants were asked to fill out Potentially Dangerous Dog Declarations on their dogs.
14. This application was routed to, but no comments were received from the following agencies: Benton County Fire District #3, Benton Clean Air Authority, Washington State Department of Health and the Benton County Code Enforcement Officer.
15. The applicants are proposing to use individual outdoor houses as noted on BOAR1.2 labeled Area #1 with no inside or indoor kennels. Area #2 shows individual stalls in an insulated and vented building. Typically, the Board of Adjustment has approved special permit applications for dog kennels when the animals are housed in kennels indoors with sheetrock siding to minimize noise and with proper ventilation. For sanitary purposes, the housing of dogs inside of residences is not permissible.
16. The applicants did not address in their application how waste from the animals would be handled. Any waste must be disposed of according to state and local laws.
17. The special permit application does not request any signs on the property, and will have no non-resident employees. Hours of operation for customers are by appointment only.
18. The proposed use could 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 Unclassified 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.
19. The proposed use as shown in the application 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 Unclassified 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.
20. The proposed use as shown in the application would be supported by adequate service facilities, if the conditions as requested by the Planning Staff were required. The proposed use would not adversely affect public services to the surrounding area. There is no evidence to support that the site would not be adversely affected. The residence on site is served by all the necessary services.
21. The surrounding area is not completely developed however, the proposed use as shown in the application is likely to hinder or discourage the development of permitted uses on neighboring properties in the Unclassified zoning district as a result of the location on the property of the dog kennels themselves. Distances involved between property lines and proposed buildings do not meet BCC setback restrictions.

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 10-19, 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. Applicants shall not conduct any of the activities within the scope of Special Permit 10-19 until the applicants are in compliance with all the conditions set forth herein. The applicants 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 applicants 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 continue to meet the requirements sent from the Benton-Franklin Health District to the Benton County Planning Department as outlined in the November 12, 2010, letter. The applicants are to provide the Planning Department written verification that all of the Health District's requirements have been met. The applicants shall continue to meet all such requirements while Special Permit SP 10-19 is in effect.

4. That the applicants provide written verification from the Benton County Department of Public Works that the approach onto Johnson Rd. has been constructed to 96-05 standards. The applicants shall continue to meet all such requirements while Special Permit SP 10-19 is in effect.
5. The requested special permit shall not be granted for the keeping of more than ____ dogs (6 months and older) on the site. The applicants shall continue to meet all such requirements while Special Permit SP 10-19 is in effect.
6. That the dogs be kept in a kennel that is indoors with insulated walls and ceiling and sheetrock interior and concrete flooring for sanitation to minimize noise and to keep proper ventilation, i.e. heated in the winter and air conditioned in the summer. The housing of dogs inside a residence is not permissible due to sanitary conditions. The applicants shall continue to meet all such requirements while Special Permit SP 10-19 is in effect.
7. That 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 Health Department, and all other local, state and federal regulations pertinent to the special permit 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 10-19 is in effect.
8. A sight-obscuring fence must be constructed around the kennels that will house the dogs. Height of fence shall be a minimum of six (6) feet and shall be maintained in good repair for segregation and separation of the dogs. The applicants shall continue to meet all such requirements while Special Permit SP 10-19 is in effect.
9. That any waste created as a result of the special permit must be disposed of in compliance with all local, state and/or federal regulations. In this application a system must be installed on site to adequately collect and treat all of the waste generated by the animals contained on the property. The applicants shall continue to meet all such requirements while Special Permit SP 10-19 is in effect.
10. As requested in the application, the proposed kennel by the applicants will not have any non-resident employees and no signs will be used to identify the property as a kennel. The applicants shall continue to meet all such requirements while Special Permit SP 10-19 is in effect.
11. The Revised Code of Washington 16.52.310 for a Dog Breeding Facility in its entirety constitute Condition 11. The applicants shall continue to meet all such requirements of RCW 16.52.310 while Special Permit SP 10-19 is in effect.

(1) A person may not own, possess, control, or otherwise have charge or custody of more than fifty dogs with intact sexual organs over the age of six months at any time.

(2) Any person who owns, possesses, controls, or otherwise has charge or custody of more than ten dogs with intact sexual organs over the age of six months and keeps the dogs in an enclosure for the majority of the day must at a minimum:

(a) Provide space to allow each dog to turn about freely, to stand, sit, and lie down. The dog must be able to lie down while fully extended without the dog's head, tail, legs, face, or feet touching any side of an enclosure and without touching any other dog in the enclosure when all dogs are lying down simultaneously. The interior height of the enclosure must be at least six inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position. Each enclosure must be at least three times the length and width of the longest dog in the enclosure, from tip of nose to base of tail and shoulder-blade-to-shoulder-blade.

(b) Provide each dog that is over the age of four months with a minimum of one exercise period during each day for a total of not less than one hour of exercise during such day. Such exercise must include either leash walking or giving the dog access to an enclosure at least four times the size of the minimum allowable enclosure specified in (a) of this subsection allowing the dog free mobility for the entire exercise period, but may not include use of a cat mill, jenny mill, slat mill, or similar device, unless prescribed by a doctor of veterinary medicine. The exercise requirements in this subsection do not apply to a dog certified by a doctor of veterinary medicine as being medically precluded from exercise.

(c) Maintain adequate housing facilities and primary enclosures that meet the following requirements at a minimum:

Housing facilities and primary enclosures must be kept in a sanitary condition.

Housing facilities where dogs are kept must be sufficiently ventilated at all times to minimize odors, drafts, ammonia levels, and to prevent moisture condensation.

Housing facilities must have a means of fire suppression, such as functioning fire extinguishers, on the premises and must have sufficient lighting to allow for observation of the dogs at any time of day or night;

Housing facilities must enable all dogs to remain dry and clean;

Housing facilities must provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs;

Housing facilities must provide sufficient shade to shelter all the dogs housed in the Primary enclosure at one time;

A primary enclosure must have floors that are constructed in a manner that protects the dogs' feet and legs from injury;

Primary enclosures must be placed no higher than forty-two inches above the floor and may not be placed over or stacked on top of another cage or primary enclosure;

Feces, hair, dirt, debris, and food waste must be removed from primary enclosures at least daily or more often if necessary to prevent accumulation and to reduce disease hazards, insects, pests, and odors; and

All dogs in the same enclosure at the same time must be compatible, as determined by observation. Animals with a vicious or aggressive disposition must never be placed in an enclosure with another animal, except for breeding purposes. Breeding females in heat may not be in the same enclosure at the same time with sexually mature males, except for breeding purposes. Breeding females and their litters may not be in the same enclosure at the same time with other adult dogs. Puppies under twelve weeks may not be in the same enclosure at the same time with other adult dogs, other than the dam or foster dam unless under immediate supervision.

(d) Provide dogs with easy and convenient access to adequate amounts of clean food and water. Food and water receptacles must be regularly cleaned and sanitized. All enclosures must contain potable water that is not frozen, is substantially free from debris, and is readily accessible to all dogs in the enclosure at all times.

(e) Provide veterinary care without delay when necessary. A dog may not be bred if a veterinarian determines that the animal is unfit for breeding purposes. Only dogs between the ages of twelve months and eight years of age may be used for breeding. Only a licensed veterinarian must euthanize animals requiring euthanasia.

(3) A person who violates subsection (1) or (2) of this section is guilty of a gross misdemeanor.

12. The kennel permit will be automatically revoked upon the applicant violating any of the listed conditions of approval.