

THE FOLLOWING MEMOS HAVE BEEN
SCANNED WITHOUT EXHIBITS FOR THE
HEARINGS TO BE CONDUCTED BY THE
BENTON COUNTY BOARD OF
ADJUSTMENT

ON

THURSDAY, DECEMBER 8, 2011 – 7 P.M.
PLANNING ANNEX
BENTON COUNTY PLN. DEPT.
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 FROM TRI-CITIES OR 786-5612
FROM PROSSER
OR
EMAIL TO
planning.department@co.benton.wa.us

CONSENT AGENDA

1. SP 10-19 EXTENSION REQUEST

APPLICANTS:

DAVID ROBERTS/DENICE RUNYON

2. SP 08-08 EXTENSION REQUEST

APPLICANT: 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: NOVEMBER 17, 2011

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: BENTON COUNTY PLANNING DEPARTMENT *clark*

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

The Benton County Board of Adjustment on December 2, 2010 conducted a public hearing on a special use permit for the operation of a commercial/breeding kennel for the keeping of up to 40 dogs that are older than six months of age. The site is located at 179803 W Johnson Road, East of the intersection of Johnson Road and County Line Road in Section 31, Township 9 North, Range 24 East, W.M. The Board approved the special use permit with conditions to be completed within a one-year timeframe.

The Benton County Planning Department sent a letter to the applicant on October 31, 2011 informing them that the one-year timeframe would expire on December 2, 2011. The applicant was also informed in said letter that this action would be placed on the Board of Adjustment's December agenda for either a null and void status, extension or withdraw. The applicant presented a letter to the Benton County Planning Department on November 7, 2011 stating the reasoning for requesting a one-year extension.

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

Enclosures:

Pin Dept. letter dated October 31, 2011
Applicant's letter dated November 7, 2011
Vicinity Map

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: NOVEMBER 17, 2011

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 granted this extension request on December 2, 2010 meeting.

The applicant presents to the Benton County Planning Department another extension letter dated November 3, 2011 for six months to complete the installation of the water storage tank.

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.

Enclosure:

Applicant's letter dated October 12, 2010 and November 3, 2011 letter

NULL AND VOID

- 1. SP 10-06 APPLICANT: AMERICAN
ROCK PRODUCTS**

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: NOVEMBER 17, 2011

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: BENTON COUNTY PLANNING DEPARTMENT 

RE: SPECIAL USE PERMIT - SP -10-06 - AMERICAN ROCK PRODUCTS

The Benton County Board of Adjustment on July 1, 2010 conducted a public hearing on a special use permit for the operation of a temporary portable concrete batch with support equipment on a 22.16-acre parcel. The project location is a portion of the Southeast Quarter of the Southeast Quarter of Section 27, Township 9 North, Range 24 East, W.M., lying North of the railway right of way. The Board approved the special use permit with conditions to be completed within a one-year timeframe.

The Benton County Planning Department sent a letter to the applicant on November 3, 2011 noting Condition No. 7, which states, "That the operation of a temporary concrete batch plant will expire on December 31, 2011. If the applicant decides to change the status of this special use permit from temporary to permanent then a new application will need to be submitted to the Board of Adjustment for review and decision making." A conditional use permit application was also forwarded to the applicant. In addition, the applicant was informed that if they do not plan on moving forward in making this temporary batch plant permanent to inform the Planning Department, prior to the expiration date. The Benton County Planning Department has received no communication from the applicant to date.

Seeing as no communication has been received from the applicant on this concrete batch plant, the Board will need to make a decision on this matter with regards to null and voiding the special use permit.

Enclosures:

Pln Dept. letter dated November 3, 2011
Vicinity Map

VARIANCE REQUEST – VAR 11-04

APPLICANT: CAROL SOLLARS

EXHIBIT LIST FOR VAR 11-04 – CAROL SOLLARS

BOARD OF ADJUSTMENT APPLICATION EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAR 1 INCLUDES:	BOAR 1.1	Variance Application	October 4, 2011
	BOAR 1.2	Plot Plan	
	BOAR 1.3	Bld Construction Plan	September 13, 2011
BOARD OF ADJUSTMENT STAFF MEMO EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAM 1 INCLUDES:	BOAM 1.1	Staff Memo	October 25, 2011
	BOAM 1.2	Notice of Open Record Hearing	October 13, 2011
	BOAM 1.3	Benton Co. Fire Marshall Comments	October 12, 2011
	BOAM 1.4	Steve Brown (Bld Dept.) Comments	October 13, 2011
	BOAM 1.5	Benton Co. Public Works Comments	October 17, 2011
	BOAM 1.6	BFHD Comments	October 18, 2011
	BOAM 1.7	Pictures of the site (3 pages)	October 7, 2011
	BOAM 1.8	Site map	October 12, 2011
	BOAM 1.9	Aerial of the site	2008
BOARD OF ADJUSTMENT HEARING NOVEMBER 3, 2011			
	Exhibit #	Document Name	Dated
BOAH 1 INCLUDES:			

EXHIBIT SHEET – E-1 – Exhibit listing
 BOAR – Board of Adjustment Record Exhibits
 BOAM – Board of Adjustment Memo Exhibits
 BOAH 1 - Documents submitted during the hearing

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: OCTOBER 25, 2011
HEARING DATE: NOVEMBER 3, 2011
TO: BENTON COUNTY BOARD OF ADJUSTMENT
FROM: CLARK A. POSEY, SENIOR PLANNER 
BENTON COUNTY PLANNING DEPARTMENT
RE: VARIANCE APPLICATION – VAR 11-04

**APPLICANTS/
PROPERTY OWNERS:** CAROL SOLLARS
210105 E. PERKINS RD
KENNEWICK, WA 99337

SPECIFIC REQUEST: The applicant is requesting a variance to BCC 11.16A .080 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. Leaving 35 feet from the center of Perkins Road, or 10 feet from the property line.

BACKGROUND:

Site Location: The site is located at 210105 E. Perkins Road. Kennewick, WA 99337 in the Northwest Quarter of the Northeast Quarter of the Southeast Quarter, in Section 16, Township 8 North, Range 30 East W.M.

Land Use: The surrounding land uses are developed as residential with single-family residential structures with small pasture areas.

Zoning & Comprehensive Plan Designation: Site/surrounding areas: RURAL LANDS 5.

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 **11.16A.080 PROPERTY DEVELOPMENT STANDARDS--SETBACK REQUIREMENTS.** All lands, structures, and uses in the Rural Lands Five Acre District (RL-5) shall meet the following setback requirements, and if applicable, the setback requirements set forth in Title 15 BCC (Protection of Critical Areas and Resources).

(a) Setback Requirements. The following minimum setbacks shall apply:

(1) Each dwelling unit, accessory building, and accessory use on a parcel shall have a setback of fifty-five (55) feet from the centerline of any public road right-of-way or twenty-five (25) feet from the property line bordering any public road right-of-way, whichever is greater; and a setback of twenty-five (25) feet from the closest edge of any legally-established boundary line of a private access easement.

(2) Each dwelling unit shall have a setback of twenty-five (25) feet from the rear parcel lines.

(3) Each accessory building and accessory use shall have a setback of ten (10) feet from all alleys and the rear parcel lines.

(4) Each dwelling unit, accessory building, and accessory use on a parcel shall have a setback of ten (10) feet from the side parcel lines.

(5) All shelters, coops, or other structures used for the habitation of livestock shall have a setback of at least thirty (30) feet from every property line of the parcel on which it is located, unless a greater setback is otherwise required under Benton County Code.

(6) All dwelling units and swimming pools shall have a setback of one hundred fifty (150) feet from any parcel located partially or wholly within the Growth Management Agricultural Act District (GMAAD) and from any adjacent orchard, hop field or vineyard (or combination thereof) of ten (10) acres or more on one parcel or on contiguous parcels under common ownership.

(7) Cornices, eaves, belt courses, sills, fireplace chimneys, and open, unenclosed stairways or balconies not covered by a roof or canopy may extend or project from a building three (3) feet into any required setback area; provided, none of these architectural features may be located within any easements.

(8) Ground floor uncovered, unenclosed porches, platforms, or landings may extend or project from a building six (6) feet into the setback area but no closer than five (5) feet to any parcel line; provided, none of these architectural features may be located within any easements.

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 Carol Sollars, 210105 E. Perkins Road. Kennewick, WA 99337.
2. The applicant is requesting approval for a variance to BCC 11.16A.080 of 20 feet reduction from the required front yard setback of 55 feet from the centerline of the county road. The applicant is requesting to construct a garage leaving a 35-foot front yard setback from the centerline of the county road, 10 feet from the property line.
3. The site is located at 210105 E. Perkins Road. Kennewick, WA 99337 in the Northwest Quarter of the Northeast Quarter of the Southeast Quarter, in Section 16, Township 8 North, Range 30 East W.M.
4. The application for VAR 11-04 was submitted to Benton County on October 4, 2011 and was determined a complete application for processing on October 7 2011.
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 11-04 was published on October 20, 2011, 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 November 3, 2011.
7. The Benton County Building Department required that a building permit be obtained.
8. The Benton Franklin Health District states: This office has reviewed this proposal and the existing records we have for the on-site septic system that serves this property. It does not appear that the proposed variance for the placement of the garage/shop or the garage/shop being placed and maintaining normal required setbacks to the property line would either impact the existing on-site septic system.
9. Per Benton County Fire Marshal "Exterior fire wall resistance must meet International Building Code Requirements".
10. If the shop/garage were built 10-feet from the front property line any vehicle parked waiting to pull into the building (in this case a motor home) would block possible traffic as vehicle could not completely pull off the county road. If building is constructed to the required setbacks for this zone this will not be a concern.

11. The Public Works Department recommends denial of the variance request; they will not approve an additional approach and state that, the applicant has enough room for the construction of the requested garage/shop without being in the designated county setback.

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.

Recommendation from the Planning Department: A site visit of the applicant's address was conducted by the Planning Department on Friday, October 7, 2011. During the visit it was determined that there is ample room on the applicant's property for the construction of the shop building without encroaching into the setback of the County Road Right of Way.

The applicant's property is 200 feet in width and at least 200 feet deep in the area that the construction is being purposed. The existing house is 67 feet from the centerline of the county road and would be a visual impact to the existing driveway if a building were constructed 10 feet from the front property line. In addition the Public Works Department would deny an application for an additional approach onto Perkins Road from this property. The Planning Department recommends denial of this application

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 11-04 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/shop and meet International Building and Fire Codes.
4. The applicant for Variance VAR 11-04 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. That the Benton-Franklin Health District's requirements would continue to be met before and after the construction of the garage. An existing system evaluation has been performed and it appears that a 100% replacement area has been established in the event of a system failure.
6. No additional driveways or approaches will be allowed or will be approved by the Benton County Public Works Department for this property on Perkins Road.
7. If the shop/garage were built 10-feet from the front property line any vehicle parked waiting to pull into the building (in this case a motor home) would block possible traffic as vehicle could not completely pull off the county road. If building is constructed to the required setbacks for this zone this will not be a concern.

Therefore, the Planning Department would not recommend the approval of this variance

VARIANCE REQUEST – VAR 11-05

**APPLICANTS:
DARRELL/JOLEA NICKERSON**

EXHIBIT LIST FOR VAR 11-05 – DARRELL/JO LEA NICKERSON

BOARD OF ADJUSTMENT APPLICATION EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAR 1 INCLUDES:	BOAR 1.1	Variance Application	October 10, 2011
	BOAR 1.2	BFHD Onsite Disposal System Permit	July 7, 2010
	BOAR 1.3	Plot Plan	
BOARD OF ADJUSTMENT STAFF MEMO EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAM 1 INCLUDES:	BOAM 1.1	Staff Memo	October 25, 2011
	BOAM 1.2	Notice of Open Record Hearing	October 13, 2011
	BOAM 1.3	Ken Williams Fire Marshal Comments	October 12, 2011
	BOAM 1.4	Steve Brown (Bld Dept.) Comments	October 13, 2011
	BOAM 1.5	Benton PUD Comments	October 14, 2011
	BOAM 1.6	City of Kennewick Comments	October 14, 2011
	BOAM 1.7	BFHD Comments	October 25, 2011
	BOAM 1.8	Benton Co. Public Works Comments	October 26, 2011
	BOAM 1.9	VAR 10-03 Ltr. To applicant	January 11, 2011
	BOAM 1.10	Findings of Fact/Conclusions of Law and Decision on VAR 10-03	January 11, 2011
	BOAM 1.11	Variance Application VAR 10-03	November 9, 2010
	BOAM 1.12	Plot Plan for VAR 10-03	
	BOAM 1.13	Pictures of the site (4 pages)	July 14, 2010
	BOAM 1.14	Aerial of the site	2008
	BOAM 1.15	Site plan	October 12, 2011
BOARD OF ADJUSTMENT HEARING NOVEMBER 3, 2011			
	Exhibit #	Document Name	Dated
BOAH 1 INCLUDES:			

EXHIBIT SHEET – E-1 – Exhibit listing
 BOAR – Board of Adjustment Record Exhibits
 BOAM – Board of Adjustment Memo Exhibits
 BOAH 1 - Documents submitted during the hearing

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: OCTOBER 25, 2011
HEARING DATE: NOVEMBER 3, 2011
TO: BENTON COUNTY BOARD OF ADJUSTMENT
FROM: CLARK A. POSEY, SENIOR PLANNER 
BENTON COUNTY PLANNING DEPARTMENT
RE: VARIANCE APPLICATION – VAR 11-05

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

SPECIFIC REQUEST: The applicants are requesting approval for a variance to BCC 11.13.080 for a twenty (20) foot reduction from the required front yard setback of 25 feet from the front property line for the construction of a garage.

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 surrounding by the City of Kennewick.

Zoning: Site and surrounding areas: Urban Growth Area Residential.

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 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.

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. **11.13.080 Property Development Standards – Setback Requirements:** All lands, structures, and uses in the Urban Growth Area Residential (UGAR) shall meet the

following setback requirements, and if applicable, the setback requirements set forth in Title 15 BCC (Protection of Critical Areas and Resources).

(a) Setback Requirements. The following minimum setbacks shall apply:

(1) Each dwelling unit, accessory building, and accessory use on a parcel shall have a setback of twenty-five (25) feet from the property line bordering any public road right-of-way; and a setback of twenty-five (25) feet from the closest edge of any legally-established boundary line of a private access easement.

(2) Each dwelling unit shall have a setback of twenty-five (25) feet from the rear parcel lines.

(3) Each accessory building and accessory use shall have a setback of ten (10) feet from all alleys and the rear parcel lines.

(4) Each dwelling unit, accessory building, and accessory use on a parcel shall have a setback of ten (10) feet from the side parcel lines.

(5) All shelters, coops, or other structures used for the habitation of livestock shall have a setback of at least thirty (30) feet from every property line of the parcel on which it is located, unless a greater setback is otherwise required under the Benton County Code.

(6) All dwelling units and swimming pools shall have a setback of one hundred fifty feet (150) from any parcel located partially or wholly within the Growth Management Act Agricultural District (GMAAD) and from any adjacent orchard, hop yard, or vineyard (or combination thereof) of ten (10) acres or more on one parcel or on contiguous parcels under common ownership.

(7) Cornices, eaves, belt courses, sills, fireplace chimneys, and open, unenclosed stairways or balconies not covered by a roof or canopy may extend or project from a building three (3) feet into any required setback area. However, none of these architectural features may be located within any easements.

(8) Ground floor uncovered, unenclosed porches, platforms, or landings may extend or project from a building six (6) feet into the setback area but no closer than five (5) feet from any parcel line; provided, none of these architectural features may be located within any easements

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. Neel Loop Road. Kennewick, WA 99336.

2. The applicants are requesting approval for a variance to BCC 11.13.080 for a twenty (20) foot reduction to the required front yard setback of 25 feet from the front property line for the construction of a garage. This would leave a 25-foot front yard setback from the center of Neel Loop Road to the garage or 5 foot from the front property line. Neel Loop Road is a 40-foot right of way road.

3. The Benton County Board of Adjustment on December 2, 2010 approved the applicant's Variance Request – VAR 10-03 to BCC 11.08.040(a) for a five foot reduction

of the required ten foot side yard setback, and a variance from BCC 11.12.030 for a twenty foot reduction from the required 55 foot front yard setback from the centerline of the county road for the construction of a garage. (The Findings of Fact, Conclusion of Law and Decision for the December 2, 2010 Board of Adjustment Hearing is attached.)

4. 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.

5. The application for VAR 11-05 was submitted to Benton County on October 10, 2011 and was determined a complete application for processing on October 12 2011.

6. The proposed variance application did not require that a Notice of Application be published.

7. The notice for the Benton County Board of Adjustment Open Record Hearing for application VAR 11-05 was published on October 20, 2011, 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 November 3, 2011.

8. The Benton County Building Department requires that a building permit be obtained.

9. The Benton Franklin Health District stated: "This office has no objections to the proposal as modification to the existing on-site sewage system have been completed and approved in accordance with Benton Franklin District Board of Health Rules and Regulations No. 2."

10. The City of Kennewick had the following comments: "(1) 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. (2) An existing city water line and water meter are on the subject parcel. Confirm that the proposed building does not encroach on water line/meter or relocate."

11. The applicant is asking for a 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.

12. The Benton County Fire Marshal stated: "Garage must meet International Building Code Requirements."

13. The Benton County Public Works Department responded with the following comments: "The granting of the proposed variance VAR 11-05 and the placing of the garage in relation to the submitted plans would hinder any future improvements to Neel Loop. In addition, with the garage placed at such close proximity to the right of way, the landowner would be parking on the right of way. This is not acceptable to Benton County Public Works.

In the previous approved variance VAR 10-03 for this proposal we allowed a 10-foot setback at the most southerly point of the property from the right of way. This keeps the

garage doors 20 feet off the property line and allows parking on the landowners property".

Public Works Department does not recommend approval of variance VAR 11-05 as submitted.

14. The reduction would leave a 25 foot front yard setback from the center of Neel Loop road to the front of the garage or a five foot setback from the front property line. Neel Loop road is a 40 foot right of way road with only 20 feet being paved.

15. The zoning classification for this property was changed effective September 1, 2011 when the new Benton County Zoning Ordinance was adopted. The property was originally zoned Suburban - UGA and now is zoned UGAR – Urban Growth Area Residential.

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 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.

The Planning Department would not recommend approval of this variance based on the following; Comments received from Public Works listed above and that the Planning Department or the Benton County Board of Adjustment does not have the authority to grant property owners permission to park in or on county road right of way. If this variance is allowed, placement of the applicants' garage in the way he requests, would not leave room to park vehicles in front of the doors of the garage without being in the county right of way of Neel Loop Road.

The variance granted to Mr. Nickerson previously (VAR 10-13) required that the garage doors must be placed so that cars parked in front of them would not hang over the property line.

The Planning Department recommends that Condition No. 6 of the approved VAR 10-13 be required. Condition No. 6 states: "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 or allow parking within the County Right Of Way".

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 11-05 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.

The applicant for Variance VAR 11-05 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. 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 or allow parking within the County Right Of Way.

6. That the Benton-Franklin Health District's requirements continue to be met before and after the construction of the garage. An existing system evaluation had been previously performed and a 100% replacement area has been established in the event of a system failure

**CONDITIONAL USE PERMIT
CUP 11-08**

**APPLICANTS:
PAUL/VICKIE KITZKE**

EXHIBIT LIST FOR CONDITIONAL USE PERMIT – CUP 11-08 - PAUL/VICKIE
KITZKE

BOARD OF ADJUSTMENT APPLICATION EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAR 1 INCLUDES:	BOAR 1.1	Conditional Use Permit	October 7, 2011
	BOAR 1.2	Floor plan	
BOARD OF ADJUSTMENT STAFF MEMO EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAM 1 INCLUDES:	BOAM 1.1	Staff Memo	October 25, 2011
	BOAM 1.2	Notice of Open Record Hearing	October 13, 2011
	BOAM 1.3	Special Use Permit – SP 10-14	May 3, 2011
	BOAM 1.4	Fire Marshal Comments	October 11, 2011
	BOAM 1.5	Benton Co. Public Works Comments	October 18, 2011
	BOAM 1.6	City of Richland Comments	October 18, 2011
	BOAM 1.7	Pictures of the site (2 pages)	August 4, 2010
	BOAM 1.8	Plot Plan of applicant's site	
	BOAM 1.9	Pictures of the site (3 pages)	July 14, 2010
	BOAM 1.10	Benton County vicinity map	
	BOAM 1.11	Aerial of the site	2008
BOARD OF ADJUSTMENT HEARING NOVEMBER 3, 2011			
	Exhibit #	Document Name	Dated
BOAH 1 INCLUDES:			

EXHIBIT SHEET – E-1 – Exhibit listing
 BOAR – Board of Adjustment Record Exhibits
 BOAM – Board of Adjustment Memo Exhibits
 BOAH 1 - Documents submitted during the hearing

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: OCTOBER 25, 2011

MEETING DATE: NOVEMBER 3, 2011

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: CLARK A. POSEY, SENIOR PLANNER 
BENTON COUNTY PLANNING DEPARTMENT

RE: CONDITIONAL USE PERMIT – CUP 11-08
HOME OCCUPATION WITH ON-SITE SALES
AMENDING SPECIAL USE PERMIT SP 10-14

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

SPECIFIC REQUEST: The applicants, Paul & Vickie Kitzke, are requesting an amendment to Special Permit 10-14 for the addition of three employees and changing the hours of operation from Friday, Saturday 11 a.m. to 6 p.m. and Sunday noon to 5 p.m. or by appointment, open for a three day weekend and along with 4-5 events per year to 11 a.m. to 6 p.m. Thursday thru Monday and also by appointment.

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, attached garage 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(a) (In the Agricultural Zoning District) states that: "Any use permitted in the residential district."
2. The Benton County Code Section 11.08.010(l) (In the Residential Zoning District) states: (l) 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 (7) under this section states: " (7) Limited home occupation type activity involving the display and sale of products on the premises."

3. The Benton County Code Section 11.08.010(e) (In the Residential Zoning District) states the following for home occupations:

- (e) Home Occupations in a residence or an attached garage as set forth in BCC 11.08.010(e)(1).
- (1) Except those home occupations identified in BCC 11.08.010(e)(2), all home occupations which meet the following criteria are allowed upon issuance of a home occupation permit by the Benton County Planning and Building Department:
 - (a) There must be a residence on site, and the proprietor of the home occupation business must reside in that residence.
 - (b) No more than two (2) non-resident persons, whether they work on site or not, may be employed by or be partners in the home occupation business.
 - (c) There shall be no exterior indication of a home occupation or variation from the residential character of the premises other than those allowed by BCC 11.08.010(e)(1)(e) and BCC 11.08.010(e)(1)(g).
 - (d) The total area for all home occupation businesses located on a parcel, including all storage spaces, shall not occupy more than the lesser of: (i) thirty (30) percent of the residence's floor area and any attached garage; or (ii) six hundred (600) square feet.
 - (e) No more than one (1) non-illuminating sign, with a maximum area of four (4) square feet, shall be permitted in connection with the home occupation.
 - (f) No materials or equipment shall be used in a manner detrimental to the residential use of surrounding properties because of vibration, noise, light, dust, smoke, odor, interference with radio or television reception or other factors.
 - (g) Only one (1) vehicle marked to identify the home occupation is allowed to be stored outside of any structure at any one time. No other on-site, outside storage of vehicles, equipment, and/or supplies is allowed in connection with a home occupation. This prohibition shall preclude storage of building materials and equipment such as, but not limited to: lumber, plasterboard, pipe, paint, and heavy equipment.
 - (h) A home occupation permit issued to one person shall not be transferable to any other person; nor shall a home occupation permit be valid at any other address other than the one appearing on the permit.
 - (i) Once the home occupation permit is issued, the Benton County Fire Marshal may require that the home occupation business be placed on the Fire Marshal's Annual Inspection List.
- (2) The following types of home occupations are not allowed under any circumstances:
 - (a) on-site display and/or on-site sale of materials or products, unless a special permit under BCC 11.08.010(l)(7) is granted;
 - (b) Auto, truck, and heavy equipment repair, body work, or painting;
 - (c) Cabinetwork and mill work;
 - (d) Commercial Kennel;
 - (e) Veterinary clinic or hospital;
 - (f) Painting of vehicles, trailers or boats;
 - (g) Large appliance repair -- including but not limited to: stoves, refrigerators, washers and dryers;
 - (h) Machine and sheetmetal shops.

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 amendment to Special Permit 10-14 for On Site Sales application shall be denied.”

FINDINGS OF FACT:

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

FOR BOARD INFORMATION SPECIAL USE PERMITS ARE NOW ADDRESSED AS CONDITIONAL USE PERMITS. THIS CHANGE BECAME EFFECTIVE SEPTEMBER 1, 2011

1. The applicants/properties owners are Paul & Vickie Kitzke, 72308 E. 260 PR NE Richland, WA 99352.
2. The applicants are requesting an amendment to Special Permit 10-14 for the addition of three employees and changing the hours of operation from Thursday, Friday, Saturday 11 a.m. to 6 p.m. and Sunday noon to 5 p.m. or by appointment to Thursday thru Monday 11 a.m. to 6 p.m. and also by appointment.
3. The application for CUP 11-08 was submitted to Benton County on October 7, 2011 and declared complete for processing on October 7, 2011. (AMENDMENT to SP 10-14)
4. Conditional Use Permit 11-08 did not require that a Notice of Application be published.
5. The notice for the Benton County Board of Adjustment Open Record Hearing for the application of Conditional Use 11-08 was published on October 20, 2011, 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 November 3, 2011.
6. Conditional Use Permit Application CUP 11-08 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 “Rural Lands 5”. 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 of 550 square feet. The application provides that the business activity will only use 352 feet of the total 550 square feet of the attached garage. This would be within the square footage allowed for a home occupation. 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 home occupation. The applicant will need to show where the parking will be provided. Also at least one of the

parking spaces 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.
14. Based on the application and the information presented by the applicant, it appears that this application would comply with the criteria addressed above and contain in Benton Code Section 11.08.010(e).
15. The applicants have completed all of the conditions of approval that were affixed to SP 10-14 and were issued their permit on May 3, 2011 – approved permit is attached.

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 Conditional Use Permit Application 11-08, 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. That the applicants must continue to comply with all conditions of Special Use Permit SP 10-14 for Wine Tasting and Sales approved by the Benton County Board of Adjustment and Issued by the Benton County Planning Department May 3, 2011. In addition the applicants shall continue to meet all such requirements of SP 10-14 and while this Conditional Use Permit Application CUP 11-08 is in effect
- 2. That the applicants abide by the requirements as listed under BCC 11.08.010(e) – Home Occupations and shall continue to meet all such requirements while Conditional Use Permit Application 11-08 is in effect.
- 3. The presence of customers/clients at the site of the Conditional Use Permit for a Home Occupation for on site sales shall be limited to Thursday, Friday, Saturday, Sunday and Monday between the hours 11:00 a.m. to 6:00 p.m. as stated in the application and by appointment only. The applicants shall continue to meet all such requirements while Conditional Use Permit Application 11-08 is in effect.

VARIANCE REQUEST – VAR 11-06

**APPLICANTS:
MICHAEL/LENORA RUSSELL**

EXHIBIT LIST FOR VAR 11-06 – MICHAEL/LENORA RUSSELL

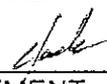
BOARD OF ADJUSTMENT APPLICATION EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAR 1 INCLUDES:	BOAR 1.1	Variance Application	November 4, 2011
	BOAR 1.2	Plot Plan	
	BOAR 1.3	Google Vicinity Map	2011
	BOAR 1.4	RED SIDE 8x8 picture	10/22/2011
	BOAR 1.5	Hen House - picture	10/22/2011
	BOAR 1.6	Hen House – picture	10/22/2011
	BOAR 1.7	Hen House – picture	10/22/2011
	BOAR 1.8	Hen House – picture	10/22/2011
	BOAR 1.9	Hen House – picture	10/22/2011
BOARD OF ADJUSTMENT STAFF MEMO EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAM 1 INCLUDES:	BOAM 1.1	Staff Memo	November 23, 2011
	BOAM 1.2	Notice of Open Record Hearing	November 10, 2011
	BOAM 1.3	Benton PUD - Comments	November 9, 2011
	BOAM 1.4	Benton Co. Fire Marshall -Comments	November 9, 2011
	BOAM 1.5	Benton Co. Bld. Dept. – Comments	November 10, 2011
	BOAM 1.6	BFHD Comments	November 18, 2011
	BOAM 1.7	Site Map	
	BOAM 1.8	Aerial of the Site	2008
BOARD OF ADJUSTMENT HEARING DECEMBER 8, 2011			
	Exhibit #	Document Name	Dated
BOAH 1 INCLUDES:			

EXHIBIT SHEET – E-1 – Exhibit listing
 BOAR – Board of Adjustment Record Exhibits
 BOAM – Board of Adjustment Memo Exhibits
 BOAH 1 - Documents submitted during the hearing

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, 2011
HEARING DATE: DECEMBER 8, 2011
TO: BENTON COUNTY BOARD OF ADJUSTMENT
FROM: CLARK A. POSEY, SENIOR PLANNER 
BENTON COUNTY PLANNING DEPARTMENT
RE: VARIANCE APPLICATION – VAR 11-06

APPLICANTS/

PROPERTY OWNERS: MICHAEL & LENORA RUSSELL
20026 S FINLEY ROAD
KENNEWICK, WA 99337

SPECIFIC REQUEST: The applicant is requesting a variance to BCC 11.16A.080(4), which is a side yard setback of ten (10) feet from the property line for any building. The variance would allow the applicants/owners approval to leave their shed constructed on the property line, making a reduction of the required ten (10) foot side yard setback, or no setback for this pre-existing 8X16 sq ft shed that was constructed in 2004. The parcel is located in the Rural Lands 5 Zoning District.

BACKGROUND:

Site Location: This site is located at 20026 S. Finley Road. Kennewick, WA 99337, on Lot 1 of Short Plat 1580, in the Northeast Quarter of the Southeast Quarter of the Northeast Quarter of Section 15, Township 8 North, Range 30 East W.M.

Land Use: The surrounding land uses are developed as Rural Lands 5. Residential and small agricultural acreages are the main activities within this area.

Zoning & Comprehensive Plan Designation: Site and surrounding areas: Rural Lands 5

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

Page 1
VAR 11-06
NOVEMBER 23, 2011

- 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 **11.16A.080 - PROPERTY DEVELOPMENT STANDARDS--SETBACK REQUIREMENTS.** All lands, structures, and uses in the Rural Lands Five Acre District (RL-5) shall meet the following setback requirements, and if applicable, the setback requirements set forth in Title 15 BCC (Protection of Critical Areas and Resources).

(a) Setback Requirements. The following minimum setbacks shall apply:

(1) Each dwelling unit, accessory building, and accessory use on a parcel shall have a setback of fifty-five (55) feet from the centerline of any public road right-of-way or twenty-five (25) feet from the property line bordering any public road right-of-way, whichever is greater; and a setback of twenty-five (25) feet from the closest edge of any legally-established boundary line of a private access easement.

(2) Each dwelling unit shall have a setback of twenty-five (25) feet from the rear parcel lines.

(3) Each accessory building and accessory use shall have a setback of ten (10) feet from all alleys and the rear parcel lines.

(4) Each dwelling unit, accessory building, and accessory use on a parcel shall have a setback of ten (10) feet from the side parcel lines.

(5) All shelters, coops, or other structures used for the habitation of livestock shall have a setback of at least thirty (30) feet from every property line of the parcel on which it is located, unless a greater setback is otherwise required under Benton County Code.

(6) All dwelling units and swimming pools shall have a setback of one hundred fifty (150) feet from any parcel located partially or wholly within the Growth Management Agricultural Act District (GMAAD) and from any adjacent orchard, hop field or vineyard (or combination thereof) of ten (10) acres or more on one parcel or on contiguous parcels under common ownership.

(7) Cornices, eaves, belt courses, sills, fireplace chimneys, and open, unenclosed stairways or balconies not covered by a roof or canopy may extend or project from a building three (3) feet into any required setback area; provided, none of these architectural features may be located within any easements.

(8) Ground floor uncovered, unenclosed porches, platforms, or landings may extend or project from a building six (6) feet into the setback area but no closer than five (5) feet to any parcel line; provided, none of these architectural features may be located within any easements.

(b) Any additional setbacks required pursuant to Chapter 3.18 BCC shall apply.

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.

FINDINGS OF FACT:

The following findings of fact and comments were received as of the date of this memo being November 23, 2011. Any comments received after the completion of this staff memo or obtained during the advertised public hearing of VAR 11-06 may be addressed by the Board of Adjustment and added or deleted from this list of conditions. The Board may decide to adopt these findings as their own or amend these Findings of Fact and listed conditions after the open public hearing.

1. The property owners/applicants are Michael & Lenora Russell 20026 S. Finley Road. Kennewick, WA 99337.
2. The applicants are requesting approval for a variance to BCC 11.16A.080(4) for a reduction of 10 foot from the required ten (10) foot side yard setback to allow him to keep an existing 8X16 sq ft shed on the property line.
3. This site is located at 20026 S. Finley Road. Kennewick, WA 99337, on Lot 1 of Short Plat 1580, in the Northeast Quarter of the Southeast Quarter of the Northeast Quarter of Section 15, Township 8 North, Range 30 East W.M.
4. The application for VAR 11-06 was submitted to Benton County on November 4, 2011 and was determined a complete application for processing on November 9,

2011.

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 11-06 was published on November 17, 2011, 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 8, 2011.
7. The Benton County Building Department required that a building permit be obtained, if needed.
8. Benton County Fire Marshal commented that the exterior walls and openings must comply and meet the IBC building requirements.
9. The Benton Franklin Health District had no objections as proposed.
10. Benton PUD had no comments or concerns regarding this request.
11. A reduction in the side yard setback would allow the applicant to leave the existing 8X16 sq ft shed on the property line.
12. Special circumstances such as lot size, slope, topography or necessary size or shape of the building are **NOT** a factor in preventing compliance with the applicable property development standards in the Rural Lands 5 Zoning District.
13. The strict application of the zoning district property development standards would **NOT** deprive the subject property of rights and privileges enjoyed by other properties in the vicinity and under the same zoning district classification.
14. The problem sought to be addressed by the variance is **NOT** related to the physical features of the particular property or building and would exist regardless of the identity of the owner;
15. The problem sought to be addressed is **NOT** common for other properties in the surrounding area, others properties have not constructed buildings on their property lines.

Recommendation from the Planning Department: It has been determined that there is ample room on the applicant's property for the construction of the shed building without encroaching into the ten foot (10) foot side yard set-back and would support denial of this Variance - VAR 11-06.

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 11-06 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 11-06 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. If the application is denied the building must be moved to conform to the **BCC 11.08.040 Setback Requirements**: All lands, structures, and uses in the Rural Lands 5 District shall conform to the following minimum side yard setback requirements; There shall be a side yard of at least ten (10) feet on each side of any dwelling, multiple family dwelling, or accessory structure,

CONDITIONAL USE PERMIT

CUP 11-09

**APPLICANTS:
JEFF/PATTI THOMPSON**

EXHIBIT LIST FOR CUP 11-09 – JEFF/PATTI THOMPSON

BOARD OF ADJUSTMENT APPLICATION EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAR 1 INCLUDES:	BOAR 1.1	Conditional Use Permit	September 15, 2011
	BOAR 1.2	Addendum to CUP	
	BOAR 1.3	Plot Plan	
	BOAR 1.4	GIS Map	September 13, 2011
	BOAR 1.5	GIS Map	September 13, 2011
	BOAR 1.6	Image Plan	August 30, 2011
BOARD OF ADJUSTMENT STAFF MEMO EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAM 1 INCLUDES:	BOAM 1.1	Staff Memo	November 28, 2011
	BOAM 1.2	Notice of Open Record Hearing	November 10, 2011
	BOAM 1.3	Notice of Application	October 20, 2011
	BOAM 1.4	Environmental Checklist	October 4, 2011
	BOAM 1.5	Addendum to Checklist	
	BOAM 1.6	Determination of NonSignificance	November 7, 2011
	BOAM 1.7	Fire Marshall's comments	October 14, 2011
	BOAM 1.8	Building Dept. comments	October 17, 2011
	BOAM 1.9	BFHD comments	October 17, 2011
	BOAM 1.10	Benton PUD comments	October 18, 2011
	BOAM 1.11	Building Dept. comments	October 20, 2011
	BOAM 1.12	Benton Public Works comments	October 21, 2011
	BOAM 1.13	KID comments	October 24, 2011
	BOAM 1.14	Dept. of Ecology comments	October 31, 2011
	BOAM 1.15	Letter from Diane L. Hamilton	October 24, 2011
	BOAM 1.16	Letter from Joe/Debbie Malek	October 25, 2011
	BOAM 1.17	Letter from Debbie LaPierre-Warner	October 26, 2011
	BOAM 1.18	Letter from Sheila Moore	October 27, 2011
	BOAM 1.19	Letter from Cris/Theresa Carlson	October 28, 2011
	BOAM 1.20	Letter from Jeff Bellingham	November 1, 2011
	BOAM 1.21	Letter from Mike Hubbell	November 3, 2011
	BOAM 1.22	Pictures of the site (4 pages)	November 9, 2011
	BOAM 1.23	Site Plan	October 18, 2011
	BOAM 1.24	Aerial of the site	2008
BOARD OF ADJUSTMENT HEARING DECEMBER 8, 2011			
	Exhibit #	Document Name	Dated
BOAH 1 INCLUDES:			

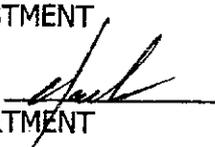
EXHIBIT SHEET – E-1 – Exhibit listing
 BOAR – Board of Adjustment Record Exhibits
 BOAM – Board of Adjustment Memo Exhibits
 BOAH 1 - Documents submitted during the hearing

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: NOVEMBER 28, 2011 **BOAM 1.1**

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: CLARK A. POSEY, SENIOR PLANNER 
BENTON COUNTY PLANNING DEPARTMENT

RE: CONDITIONAL USE PERMIT – CUP 11-09

APPLICANTS/
PROPERTY OWNERS: JEFF/PATTI THOMPSON
28104 S 959 PR SE
KENNEWICK, WA 99338-9334

PARCEL NUMBER: 1-2288-201-2717-001

SPECIFIC REQUEST: The applicants are seeking a Conditional Use Permit for the operation of a special event center for weddings, reunions, anniversaries, etc (DBA" In The Beginning"), to be conducted on a 3-acre parcel of land. Three existing buildings are presently located on the property, (1) a 20'x24' (480 sq ft) stucco pavilion, (2) a dressing room set up within a detached 48'x50' (2400 sq ft) shop building, and (3) a single-family residence with an attached garage and patio.

LOCATION: The property is at 28104 S. 959 PR SE. Kennewick, WA 99338-9334 on Lot 1 of Short Plat 2717 in the Northwest Quarter of Section 22, Township 8 North, Range 28 E, W.M.

ZONING & COMPREHENSIVE PLAN DESIGNATION: The subject and surrounding properties are designated as Rural Lands 5.

STATE ENVIRONMENTAL POLICY ACT: A Determination of Non-Significance (DNS) was issued on November 7, 2011 relative to the facts submitted to the Planning Department on Conditional Use Permit - CUP 11-09 EA 11-35 under the requirements of the Washington State Environmental Policy Act. An Environmental Impact Statement was not required.

PUBLIC NOTICE:

The application for CUP 11-09 was originally submitted to the Benton County Planning Department on September 15, 2011. Further information was requested and received and the application was declared complete for processing and routing for comments on October 14, 2011. The agency review letter was mailed out to property owners within 300 ft of the subject property on October 14, 2011.

A Notice of Application was published in the Tri-City Herald and was reviewed under the requirements of the State Environmental Policy Act for EA 11-35 submitted on October 20, 2011.

The notice for the Benton County Board of Adjustment Open Record Hearing for application CUP 11-09/EA 11-35 was published on Thursday, November 17, 2011 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 8, 2011.

APPLICABLE DEVELOPMENT REGULATIONS:

**BENTON COUNTY CODE SECTION 11.16A.050:
USES REQUIRING A CONDITIONAL USE PERMIT.**

The following uses may be permitted on a single parcel of record within the Rural Lands Five Acre District (RL-5) if the Benton County Board of Adjustment issues a CUP after a public hearing as provided in BCC 11.52.090:

BENTON COUNTY CODE SECTION 11.16A.050(o):

As a Conditional Use Permit in the Rural Lands 5 Zoning District a reception facility with a capacity not to exceed two hundred (200) attendees may be allowed.

BENTON COUNTY CODE SECTION 11.52.090(a):

Conditional Use/Special Permit General Standards. The conditional use 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 permit 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.

BENTON COUNTY CODE SECTION 11.52.090(d):

Conditional Use/Special Permit-Permit Granted or Denied. The Benton County Board of Adjustment will consider the proposed Conditional Use permit application at an open record hearing. A Conditional Use 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; and

(5) Would not hinder or discourage the development of permitted uses on neighboring properties in the applicant zoning district as a result of 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.

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

BENTON COUNTY CODE SECTION 6A.15.040 PUBLIC NUISANCE NOISE-UNLAWFUL:

It is unlawful for any person to make, continue, or cause to be made or continued or to allow to originate from his or her personal or real property any public nuisance noise which:

(a) Is plainly audible within any dwelling unit which is not the source of the sound or is generated within two hundred (200) feet of any dwelling; and,

(b) Either annoys, disturbs, injures or endangers the health, comfort, repose, peace or safety of others.

(c) Benton County Code Section 6A.15.050(p) provides that sounds created by un-amplified human voices from 6:00 a.m. to 10:00 p.m. are exempt from the provisions of Benton County Code 6A.15 and are not considered public nuisance noises.

AGENCY COMMENTS:

a. Benton County Public Works Department: The proposed CUP is located on private road PR SE 959, which has an asphalt apron, constructed to standard plan 96-05. No other permits are required for the approach. No comments were given on design capacity of the private road or nearby public roads regarding potential traffic issues.

b. Health Department: The Benton-Franklin Health Department reviewed the proposal and had the following comments:

(1) The facility must be served by an approved public water supply in accordance with WAC 246-291,

(2) The property is currently 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. Currently, the property is only used for a single-family residential house.

(3) The lot must meet minimum land area requirements as specified in Benton-Franklin Health District Rules and Regulations. As of their October letter, they had not conducted an on site inspection.

NOTE: The health department has not conducted an inspection of the site to determine the suitability of the sewage disposal system for the proposed event facility.

c. Department of Ecology: The Department of Ecology commented that any ground water development proposal that will withdraw water in excess of 5,000 gallons per day for single or group domestic supply, or for the irrigation of more than one-half acre of lawn or non commercial garden will require a permit from the Department of Ecology. Ecology does not offer an opinion or conclusion as to how much water is needed for the proposed use.

d. Fire Marshal: The Benton County Fire Marshal commented that there are no county on site fire protection water requirements unless there is a building over 2,500 sq ft. in size that is to be used by the public. Therefore, the public cannot use the unfinished pole building until it meets the requirements of the current building code. If the pole building is to be used, in the future for weddings, a fire sprinkler system (including a fire pump) will be required.

e. Building Department: Any accessory structures involved would require a building permit.

f. Kennewick Irrigation District: This parcel is within the area in Badger Canyon that was reclassified to non-irrigable/dry land. They had no other comments.

g. Benton PUD: No Comment.

h. Planning Department Discussion:

1. This application is for an Event Center for weddings, receptions, reunions, etc. (DBA "In The Beginning"). The events are to be conducted on a 3-acre parcel of land. The property is in the Rural Lands 5 Zoning District. This property is located in an area of single-family residential homes. The neighbor to the East is one hundred feet (100') away from the site; the owners to the West and North are both two hundred feet (200') away from the applicant. Three existing buildings are present on the property; a 20'x24' (480 sq ft) stucco pavilion, a dressing room set up within a detached 48'X50' (2400 sq ft) shop building, and a single-family residence with an attached garage.

2. The applicants propose 100 on site parking spaces in an enclosed grass/pasture parking lot. If you use two (2) persons per car you will have at least 200 persons that

would attend an event. The area shown on the site plan could accommodate about 100 vehicles. The application provides that the maximum persons attending an event would be 200, which is consistent with the maximum allowed by BCC 11.160.050(0). However, Internet advertisement for the facility states they can accommodate up to 350 guests, which is not consistent with the application. Driveways or adjoining properties should not be utilized as designated parking areas.

3. The applicant's property is served by a paved private thirty-foot (30') access easement filed under Auditors File No 93-30999 and 2002-046199. This private road serves in excess of 32 lots. Twenty-four (24) of the thirty-two (32) lots are developed. If all the lots were developed with single-family dwellings you would project traffic loads of approximately 320 trips per day without the event facility. The proposed application would add approximately 200 vehicle trips per event on the private road. The County does not maintain private roads; the responsibility falls on the property owners located on the private road. Increased traffic impacts are concerns of the neighborhood and are justified, as the road is private and therefore has no designated, posted or enforced speed limit. The added traffic on this private road would increase the maintenance cost to the surrounding property owners more than any outright permitted use in the Rural Lands 5 Zone. Like a single-family dwelling, or duplex, an agricultural stand, adult family home, minimum sized church or winery or a typical yard sale found in a single-family residential area. Churches and wineries by Benton County Code 11.16.A.030 (p)(s) are limited in size to 3000 sq ft and 3500 sq ft respectfully, this square footage restriction minimizes the impacts created in a residential zone or area. Activities for these uses are required to be inside of a structure.

4. Benton County Code Section 6A.15.050(p) provides that sounds created by normal un-amplified human voices from 6:00 a.m. to 10:00 p.m. are exempt from the provisions of Benton County Code 6A.15 and are not considered public nuisance noises. However, the application provides that there will be amplified music at the site until 9:00 p.m. This is not exempt from the Benton County noise ordinance. Amplified music has had an impact, both outside and inside, on owners of surrounding properties.

5. Applicants state that they have a pool bathroom that could be available for the public to use or that rented portable toilets could be utilized. The Benton County Health District, however, has not approved either of these two options. This septic system was only designed and installed as a single-family residential home system and not for a commercial operation for up to 200 patrons. Additionally, the business must be served by an approved public water supply in accordance with WAC 246.291. It is hard to determine at this time if the proposed use could be serviced by adequate facilities (septic, drain field area and public water supply).

6. Concerns have been raised about the consumption of alcohol at the site. The application provided that they would allow beer, wine and champagne only. The wedding party would be responsible to obtain a banquet license from the state. (not enforced by the county). Applicants state in their application that alcohol would be served and allowed for only a 2 to 3 hour period of time during an event. It would not be practical for the County to monitor or enforce this limitation.

7. In addition to considering the impacts of the proposed use, the Board must also consider any evidence presented regarding any similar impacts of uses allowed outright in this zone, and if such evidence is received, compare those impacts to those of the proposed use. Actual impacts of the proposed uses do not justify denial if it is demonstrated by the applicant that an allowed use would have similar impacts as the proposed use. Some of the more intensive allowed uses are agricultural stand, adult family home, crisis residential center, nursery or greenhouse, winery or brewery not to exceed 3000 sq. ft. or a Church, provided that structures used as part of the operation does not collectively exceed three thousand five hundred (3500) feet in size.

8. If negative impacts are identified, the Board must try to identify reasonable conditions that would mitigate those impacts sufficiently to allow the Board to make the findings necessary to grant the permit. The applicant may be asked to identify reasonable conditions, but the Board may independently identify conditions. Further, an applicant's disagreement with a particular condition should not dissuade the board from granting the permit with such condition(s), as opposed to outright denial, if the Board is able to conclude that the condition(s) is/are reasonable in their judgment.

PLANNING STAFF FINDINGS OF FACT:

The applicant has hosted numerous receptions and events over the past several years. This application was submitted in response to a code enforcement action.

The following findings of fact are based on comments received prior to the date of this staff memo dated November 28, 2011. Any comments received after the completion of this staff memo or submitted during the advertised public hearing of CUP 11-09 will need to also be considered by the Board of Adjustment and may add to findings different than those set forth below. The Board may decide to adopt these findings as their own or amend/add to these Findings of Fact or the proposed listed conditions after the open public hearing.

Based on the information received to date the Planning Staff makes the following findings:

1. The applicants/property owners are Jeff and Patti Thompson, 28104 S. 959 PR SE Kennewick, WA 99338-9334.
2. The site is located at 28104 S. 959 PR SE Kennewick, WA 99338-9334 on Lot 1 of Short Plat 2717 in the Northwest Quarter of Section 22, Township 8 North, Range 28 E, W.M.
3. Conditional Use Permit Application CUP 11-09 is an application for an Event Center for weddings, reunions, etc. (DBA "In The Beginning"), to be conducted on a 3-acre parcel of land. Three existing buildings are present on the property; (1) a 20'x24' (480 sq ft) stucco pavilion open on all sides with a concrete floor constructed for receptions and dancing, (2) a dressing room set up within a detached 48'x50' (2400 sq ft) shop building, a quarter of this accessory building has been converted to a finished area that is used for the bride, groom and wedding party to use for getting dressed prior to the wedding, and (3) a single-family residence with an attached garage and patio that the applicants live. The attached patio to the residential structure is also used for receptions. Additionally, the applicants intend to allow the public to utilize their

pool house restroom.

4. The proposed use for CUP 11-09 is allowable by Conditional Use Permit as stated in BCC Section 11.16A.050(o) if approved by the Benton County Board of Adjustment.
5. The application for CUP 11-09 was originally submitted to Benton County Planning Department on September 15, 2011. The application was declared complete on October 14, 2011. The agency review letter was mailed out on October 14, 2011.
6. A Notice of Application was published in the Tri-City Herald and was reviewed under the requirements of the State Environmental Policy Act for EA 11-35 a Determination of Non-Significance (DNS) was issued on November 7, 2011. Accordingly, an Environmental Impact Statement was not required.
7. The notice for the Benton County Board of Adjustment Open Record Hearing for application CUP 11-09/EA 11-35 was published on Thursday, November 17, 2011 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 8, 2011.
8. No allowed uses listed in the RL-5 Zone consists of outdoor public events with 100 to 200 attendees
9. The proposed use would add approximately 200 trips per event, nearly doubling the use of the private access easement on a normal weekend day. The private access road is not maintained by the County, but by the property owners on the private road. The increase of traffic associated with this reception facility would cause additional road wear and impacts on the private road serving surrounding properties. The private road has no designated, posted or enforced speed limit.
10. The applicants have not submitted any evidence of the impacts of with any outright permitted use in the Rural Lands 5 Zoning District, so it is not possible to compare any such impacts with those of the proposed use.
11. The applicants are providing 100 on site parking spaces in an enclosed grass/pasture parking lot
12. The applicants' use would be located completely outside. The proposed amplified music performed outside has and would have an impact to other outside uses of the surrounding properties. According to comments by surrounding property owners, the applicants have had outside amplified music for events after of 10:00 p.m. Those impacts consist of interfering with the basic use and enjoyment of adjoining property owners normal use of their private properties without the hindrances of loud amplified voice and music trespass onto their properties when they would most be able to enjoy outside activities of their own. Owners in the surrounding area complain that the music can be heard from their back yards and later that the 10:00 o'clock limit. They also say the crowds, noise, and traffic is just too disruptive to our local neighborhood and environment.
13. The applicants have not submitted any evidence to prove that the noise disturbances

from as any outright permitted use in the Rural Lands 5 Zoning District would be significant.

14. The applicants have not submitted any evidence to demonstrate that their activity would not hinder or discourage development on neighboring properties more than any outright permitted use in the Rural Lands 5 Zoning District.

15. The septic system on the property was designed and installed for a single-family residential home system, not for a commercial operation.

16. The facility must be served by an approved public water supply in accordance with WAC 246.291, and the Washington State Department of Health.

17. Event guests would consume alcohol and some will undoubtedly drive after doing so, as beer, wine, and champagne are/may be served at events. The wedding party would be responsible to obtain a banquet license from the state. (this is not an action enforced by the county). Applicants' state in their application that, alcohol will be allowed during events held at the facility. Applicants proposed to mitigate this concern by serving alcohol for only a 2 to 3 hour period of time during an event. It would not be practical for the County to monitor or enforce this limitation.

CONDITIONS OF APPROVAL:

If the Board of Adjustment decides to approve this Conditional Use Permit Application CUP 11-09 based on the information presented at the public hearing and after making such findings that support that decision, the Planning Department would recommend that the following conditions be reviewed and considered by the Board of Adjustment:

1. Applicants shall not conduct any of the activities within the scope of Conditional Permit CUP 11-09 until the applicant is 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 conditional use permit until those conditions have been met. The Conditional Use 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 conditional use permit within one (1) year from the time the Board of Adjustment conditionally approved the conditional use 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 applicants' last known address at least twelve (12) days in advance of the upcoming Board of Adjustment meeting.

3. Per Benton County Code, Section 11.16.050(o). Use shall be limited to a reception facility with a capacity not to exceed two hundred (200) attendees,

4. That the applicants provide written verification to the Benton County Planning Department that all requirements of the Benton Franklin Health District for the use of an on-site septic system have been completed. The applicants shall continue to meet all such

requirements while Conditional Use Permit CUP 11-09 is in effect.

5. The drain field and replacement areas must remain unencumbered and not used for parking or storing of any vehicles or equipment.

6. That the applicants provide written verification to the Benton County Planning Department that all requirements of the Washington State Department of Ecology for a Group B Public Water Supply System has been completed and approved. The applicants shall continue to meet all such requirements of the Department of Ecology while Conditional Use Permit CUP 11-09 is in effect.

7. That the applicants provide written verification to the Benton County Planning Department that all building permits required of the Benton County Building Department have been obtained and any additional buildings are permitted and meet current building code standards. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 11-09 is in effect.

8. Amplified music must be contained within an enclosed building. No amplified music would be allowed outside. The applicant shall continue to meet such requirements while Conditional Use Permit CUP 11-09 is in effect.

9. If food is to be prepared on site, the applicants must obtain Food Service Sanitation Permit per Washington Administrative Code (WAC 256-215) issued by the Benton-Franklin Health District.

10. That the applicants are to provide parking plan showing where parking will take place. Parking is limited to 100 (one hundred) cars. No additional parking will be allowed along the public or private right-of-way. No parking shall be allowed on adjoining properties not under the ownership of the Thompson's of 28104 S. 959 PR SE. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 11-09 is in effect.

11. Before, during and after an event, parking two (2) attendants are required to be located at the entrance and exit of the event center to facilitate the traffic entering and leaving the property. Patrons entering and leaving the event must do so in an orderly manner. The applicants shall provide a security/crowd control plan outlining how crowd control and security will be implemented during events. The applicant shall continue to meet this requirement while Conditional Use Permit CUP 11-09 is in effect. It is suggested that applicants' arrange for:

a. Two traffic and crowd control persons for each event is reasonably expected to be in attendance during any event for purposes of traffic and crowd control

b. All traffic and crowd control personnel shall be over eighteen years of age.

12. The applicants need to maintain an emergency response and designated fire lane open and unobstructed at all times during an event at the facility. This plan is to be coordinated and approved by the Benton County Fire Marshal, Benton County Fire District #1 and the Benton County Sheriff's Office. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 11-09 is in effect.

13. That the approval of this conditional use permit does not in any way give the applicant approval for on-site distribution or consumption of alcoholic beverages. The rules and regulations of the Washington State Liquor Control Board must be followed. Appropriate permits or licenses must be obtained for any alcohol consumption on the premises. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 11-09 is in effect.

14. Owners/operators shall be responsible to obtain and comply with any applicable federal, state, and local laws, and must obtain all necessary permits and approvals prior to operation.