

Benton County Board of Adjustment
Planning Annex – 7 p.m. September 1, 2011
1002 Dudley Avenue - Prosser, WA 99350

Vice-Chairman Dean Burows opened and will conduct the Board of Adjustment Hearing due to the absence of the Chairman.

Members Roll Call: Present: Dean Burows- Vice-Chairman
Herb Everett - Member
Bob Page - Member
Absent: Brent Chigbrow - Chairman

Planning Staff: Present
Clark A. Posey – Senior Planner – Current
Carel Hiatt - Recorder

MOTION: It was moved by Dean Burows and seconded by Bob Page that the July 7, 2011 Board of Adjustment minutes be approved as written. Motion carried.

NOTE: The Board of Adjustment minutes are a summary of the testimony presented at the hearing, not a verbatim transcript.

NOTE: All persons present that wished to testify on any actions presented to the Board of Adjustment tonight had been sworn in.

NOTE: The Board members were asked by the Planner and each responded with a “No” that they did not have a personal Conflict of Interest with any of the actions presented to the Board of Adjustment tonight regarding: Null and Void: SP 10-13 Mariya Tarasyuk, Consent Agenda: SP 10-12 Apollo, Inc., SP 10-05 – Trish Trickett, Conditional Use Permit – CUP 07-07, Special Use Permit – SP 07-18, Unfinished Business: Variance Request – VAR 11-02 – Troy L. Simms, New Business: Special Use Permit- SP 11-07 – John R. Elliott dba J and J Automotive Repair.

The Vice-Chairman will table the review and signage of the Board of Adjustment's Rules of Procedure due to the absence of the Chairman at tonight's meeting. The Rules of Procedure will be placed on the October 6, 2011 agenda.

**NULL AND VOID:
SPECIAL USE PERMIT – SP 10-13 – MARIYA TARASYUK**

The Planner summarized for the Board that this action had come before the Board on July 1, 2010 which was continued to September 2, 2010 for the operation of a business activity for the repair of motor vehicles, RVs, boats, etc at 5601 W Lattin Road, West Richland.

The Vice-Chairman did not open this action for public comment.

Mr. Everett: Basically, the applicant's one-year to completion the conditions of approval is up and they have not been responsive to conditions of approval. In addition, the applicant has not responded to communication from the Benton County Planning Department.

Planner: Correct.

Vice-Chairman: In the documents that were given to the Board for review, there did not appear to be any responsive/written correspondence from the applicant to the Planning Department.

Mr. Everett stated that the Board should move to findings at this point in time for the declaring of this action null and void.

NOTE: The Planner informed the Board that at their discretion the following findings might also be adopted for the record by the Board tonight and used as the Board's findings along with additional findings that may be added to the list, if the Board so chooses.

MOTION: Mr. Everett made a motion, which was seconded by Mr. Page that the Board of Adjustment pursuant to the aforementioned controlling factors finds that the application of Mariya Tarasyuk for a Special Use Permit – SP 10-13 should be declared null and void for the reasons enumerated in numbers 1 thru 8 of the Benton County Planning Department's Findings of Fact for the recommendation of null and void dated August 18, 2011.

1. Applicant shall not conduct any of the activities within the scope of Special Permit 10-13 until the applicant is in compliance with all the conditions set forth herein. The applicant shall notify the Benton County Planning Department in writing when the conditions set forth herein have been completed. The Planning Department shall not issue the special permit until those conditions have been met. The special permit shall not become effective until issued by the Planning Department. **The applicant has continued to conduct activities on site without having completed the conditions of approval imposed by the Board of Adjustment.**
2. The conditions of approval have not been met and the Planning Department does not issue the special permit within one (1) year from the time the Board of Adjustment conditionally approved the special permit, the Board of Adjustment may declare it's 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. **The applicant was notified in writing on March 10, 2011 and July 20, 2011 from the Benton County Planning Department with regards to violations of the conditions of approval and no response had been received.**
3. The business activity, including all storage space, shall not occupy more than eighteen hundred (1800) square feet of total floor area within a detached accessory building. Only one (1) approved detached accessory building on a parcel may be used for the business activities. The applicant shall continue to meet all such requirements while Special Permit SP 10-13 is in effect. Non-permitted storage containers are not allowed. **Majority of the applicant's business is being conducted outside of the detached accessory building; activity should have been confined to the inside of the building utilizing 1800 square feet of the existing structure.**
4. The property owner and the proprietor(s) of the business shall comply with all requirements of the Benton County Building Department, the Benton County Fire Marshal, the Benton-Franklin District Health Department, and all other local, state and federal regulations pertinent to the business activity pursued. The requirements of or permission granted by the Board of Adjustment shall not be construed as an exemption from such regulations. The applicant shall continue to meet all such requirements while

Special Permit SP 10-13 is in effect. **The applicant has not submitted any documentation to the Benton County Planning Department with regards to being in compliance with these agencies requirements.**

5. That the Special Permit for a vehicle repair shop repairing motor vehicles, boats, ATV's etc, would be permitted between the hours of 8:00 a.m. and 5:00 p.m. Monday thru Friday. The applicant shall continue to meet all such requirements while Special Permit SP 10-13 is in effect. **The applicant has not adhered to the agreed hours of operation approved by the Board. The applicant has also continued to work weekends and after 5 p.m. Property owners have contacted Benton County Code Enforcement with regards to the continued hours of operation by the applicant.**
6. If the applicant retains the lift on the front side of the building then it must be enclosed within the existing shop building for safety concerns and esthetics of the neighborhood. If, however, the applicant decides to move the hoist to the back of the shop it will need to be enclosed within a six foot high security locked fence until such time as it is incorporated into the shop. Construction of the new facility to house the hoist can not be higher then the current eve height of the existing building in order to make it compatible with the surrounding buildings in the area. The applicant shall continue to meet all such requirements while Special Permit SP 10-13 is in effect. **The applicant has made no attempt to enclose or move the automotive lift that is being used in the front of the building. The applicant has even used a forklift to lift a motor home to work on in front of his business and in the road right of way. The Benton County Planning Department took pictures of the site on August 1, 2011, which shows the forklift and the motor home. In addition, pictures taken August 11, 2011 reveal that the lift is still located in the front of the shop.**
7. The requirements of the Benton-Franklin Health District must be met prior to issuance of a special use permit. The applicant shall continue to meet all such requirements while Special Permit 10-13 is in effect. **The applicant has not submitted any documentation to the Benton County Planning Department stating that they are in compliance with the Benton Franklin Health District.**
8. No overnight outside parking of customers' vehicles is allowed, without a site-obscuring fence for storage. Storage areas with hulk and non-operable vehicles are prohibited outside of this fenced area. The applicant shall continue to meet all such requirements while Special Permit 10-13 is in effect. **The applicant has and continues to have vehicles parked overnight at the business since the permit was preliminary approved by the Board. Vehicles have also been left in the road right of way for several days at a time.**

And that the Vice-Chairman, in conjunction with the Secretary of the Board of Adjustment prepare and adopt written findings and conclusions that articulate and are consistent with the findings, conclusions and decisions made by the Board of Adjustment tonight. Motion carried. (Three in favor)

CONSENT AGENDA ITEM:

EXTENSION REQUEST – SP 10-12 – APOLLO, INC.

The Planner informed the Board that the applicant was requesting a six-month extension in order to complete the fencing requirement. In addition, a site visit was conducted on July 29,

2011 and it was noted that some equipment was located within the setback of the Amon Wasteway.

KEVIN BURKE – APOLLO, INC. 1618 WEST 51ST AVENUE – KENNEWICK, WA 99336 stated that the equipment had been removed. The fencing will be scheduled for installation on September 12 and should be completed within a six-month timeframe.

MOTION: Mr. Everett made a motion which was seconded by Mr. Page that the Board of Adjustment grant to the applicant – SP 10-12 – Apollo, Inc. – a six month extension from September 1, 2011 in order to complete the installation of the fencing as conditioned by the Board of Adjustment. Motion carried. (Three in favor)

EXTENSION REQUEST – SP 10-05 – TRISH TRICKETT

The Planner informed the Board that the applicant had forwarded to the Planning Department a signed special use permit listing the current property owners as requested by the Board of Adjustment.

DEAN BUROWS: He would be inclined to deny this extension request as there does not appear to be any forward movement and the building seems to have been sublet. The only business that the Board approved was for the restoration of old cars, nothing else. The special use permit would not be transferable.

MOTION: Mr. Everett made a motion and seconded by Mr. Page that the applicant be granted a one-year extension for SP 10-05 from September 1, 2011. Motion carried. (Three in favor)

EXTENSION REQUEST – CUP 07-07 – KEITH/TERRY BURKHART

The Planner informed the Board why the applicant was requesting another one-year extension.

MOTION: Mr. Page made a motion, which was seconded by Mr. Everett that the Board of Adjustment grants to the applicants - CUP 07-07 – a one-year extension from September 1, 2011. Motion carried.

EXTENSION REQUEST – SP 07-18 – STEVE WESTERMEYER

The Planner informed the Board that the applicant had written in a letter received today by the Planning Department requesting a continuance on this action due to a family emergency. The applicant also stated that at the October 6, 2011 Board of Adjustment meeting a Phasing Plan would be presented to the Board.

MOTION: Mr. Everett made a motion, which was seconded by Mr. Page that the Board of Adjustment grant the applicant's request that this action be continued to the next regularly scheduled Board of Adjustment Hearing on October 6, 2011 at 7 p.m. – Planning Annex – 1002 Dudley Avenue – Prosser, WA 99350. Motion carried. (Three in favor)

UNFINISHED BUSINESS:

VARIANCE REQUEST – VAR 11-02 – TROY L. SIMMS

The Planner informed the Board that this action had come before them on July 7, 2011, however, seeing as the applicant was not in attendance the Board made a motion to continue said action for two months. The Benton County Planning Department mailed a letter to the applicant on July 14, 2011 informing him that this action would be continued to September 1, 2011 in order to give him time to connect with the Benton Franklin Health District. The Planning

Department contacted the Benton Franklin Health District on August 15, 2011. The Benton Franklin Health District informed the Planning Department that they had no contact with the applicant. The applicant was also informed in the July 14, 2011 letter that if no communication were to be received by him by September 1, 2011 then this action would be presented to the Board of Adjustment for a null and void status.

The Vice-Chairman closed the hearing and called for Board discussion and completion of the findings of fact.

MOTION: Mr. Page made a motion, which was seconded by Mr. Everett that the Board of Adjustment pursuant to the aforementioned controlling factors, finds that the application for Troy L. Sims – VAR 11-02 should be denied based on the following: (1) There are no special circumstances that would prevent compliance with the applicable property development standards. (2) The difficulty involved with the subject property is related to the physical features of the applicant's property and building. The building was already on site and due to the size of the building it would prohibit any future additions or buildings to be constructed on site due to the lack of space for the drain field. (3) The variance would be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and under the same zoning classification as the granting of this variance would allow the applicant to violate the Benton Franklin Health District's Rules and Regulations. (4) The Benton Franklin Health District stated that the addition onto the garage would not meet the department's setbacks to the existing drain field or the reserve area. (5) The applicant would not be able to meet the requirements of the Benton Franklin Health District. (6) The applicant did not attend the Board of Adjustment Hearing on July 7, 2011 or the continued hearing conducted on September 1, 2011. (7) The Benton County Planning Department mailed a letter to the applicant on July 14, 2011 informing him that communication would need to be received by September 1, 2011 with regards to satisfying the Benton Franklin Health District's concerns. In addition, if no communication was received by the September 1, 2011 date then this variance would be declared null and void at the September 1, 2011 Board of Adjustment Hearing. The Vice-Chairman, in conjunction with the Secretary of the Board of Adjustment, prepare and adopt written findings and conclusions that articulate and are consistent with the findings, conclusions and/or decisions made by the Board of Adjustment tonight. (Three in favor)

NEW BUSINESS:

SPECIAL USE PERMIT – SP 11-07 – THE APPLICANT IS REQUESTING A SPECIAL USE PERMIT FOR THE OPERATION OF AN AUTO REPAIR BUSINESS. THE SITE IS LOCATED AT 198305 E 7TH AVENUE – KENNEWICK – TRACT 26, LOT 2 OF CHICAGO TEN ACRE TRACTS IN SECTION 5, TOWNSHIP 8 NORTH, RANGE 30 EAST, W.M. APPLICANT: JOHN R. ELLIOTT DBA J AND J AUTOMOTIVE REPAIR 198305 E 7TH AVENUE – KENNEWICK, WA 99337

The Vice-Chairman opened the public portion of the hearing.

The Planner summarized said action for the Board, entered into the record all exhibits noted in Exhibit E-1, including BOAH 1.1 – 2008 Aerial of the site presented to the Board at the hearing.

APPLICANT TESTIMONY: John Elliott/Amanda Elliott – 198305 E 7th Avenue – Kennewick, WA 99337 stated that he wanted to operate an auto repair business not auto body repair at his location.

VICE-CHAIRMAN: Was this a Code Enforcement action?

JOHN ELLIOTT: Yes, his neighbor had turned him in. He had a business license and was not trying to go under the radar, but apparently the license is for the City of Kennewick and would not apply to the county. He wanted to know why the city sold him a business license if he resides in the county. He stated that originally he operated in the city for eight years, but now operates at his residence.

HERB EVERETT: How long have you been operating at this location?

JOHN ELLIOTT: Five years at this current address. Him and the new neighbor are having some property issues.

MR. PAGE: Has your property been surveyed?

JOHN ELLIOTT: When I bought it.

MR. PAGE: Do you have your corner markers identified?

JOHN ELLIOTT: No. The residence on site was built in 1964. He had contacted the Planning Department and was informed he may need to do a boundary line adjustment. The neighbor put up a chicken wire fence on his property with regards to the dispute over the location of the well. The neighbor's fence was located directly on the applicant's well.

VICE-CHAIRMAN: Does the well service one or two parcels?

JOHN ELLIOTT: No, just the applicants. The neighbor has her own.

PLANNER: Seeing as this part of the Chicago Ten Acre Tracts Subdivision, probably a survey was done prior to it being approved.

JOHN ELLIOTT: Showed the Board on the aerial provided the location of the well that is in dispute between the property owners.

AMANDA ELLIOTT: Submitted in documents (1) Email from Arnold Schmelzer dated September 1, 2011 – BOAH 1.2 (2) Letter from Kelly Hoyem dated August 30, 2011 – BOAH 1.3 (3) Complaint Investigation Request – Benton Franklin Health District dated May 10, 2011 (five pages) – BOAH 1.4.

MR. EVERETT: Does this operation have a fenced compound now, site obscuring?

JOHN ELLIOTT: No. He outlined the fenced area on the aerial. He pointed out the location of the well on the aerial.

VICE-CHAIRMAN: Did this go through the Health Department?

AMANDA ELLIOTT: Yes, it did.

VICE-CHAIRMAN: Definition of a public water supply would be one that would be sold to the general public, not a private well.

PLANNER: If Mr. Elliott were to have employees at this site, then he would have to have a public water supply.

AMANDA ELLIOTT: No employees, just the applicant.

PLANNER: During site visit conducted by the Planning Department many cars were noted to be on site.

VICE-CHAIRMAN: Are a majority of the vehicles on site, personal vehicles, operable and licensed?

JOHN ELLIOTT: Yes, all the cars are operable, but may not be all licensed.

MR. PAGE: Where is your oil barrel?

JOHN ELLIOTT: Inside.

MR. PAGE: How many customer vehicles would you have per day?

JOHN ELLIOTT: Two cars a day or at the most four, but majority of the time only two.

PROPONENT TESTIMONY/APPLICANT REBUTTAL – NONE.

The Vice-Chairman closed the public portion of the hearing, called for Board discussion and completion of the findings of fact.

MR. PAGE: Property line needs to be established by having a survey done of the property.

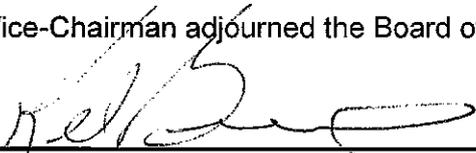
VICE-CHAIRMAN: Lay down yard needs to be established.

PLANNER: No bathroom facilities in the shop, so the well issue is a mute point with regards to this special use permit request.

MOTION: Mr. Everett made a motion, which was seconded by Mr. Page that the Board of Adjustment pursuant to the aforementioned controlling factors finds that the application of John R. Elliott dba J & J Auto Repair SP 11-07 should be approved with the conditions as outlined in the Staff Memo dated August 22, 2011 with the following amendment to **Condition No. 7: “Any used vehicle fluids, solvents and oils must be collected in waste containers or a waste oil burner is to be utilized for heating. . . .”, Condition No. 11 that “The applicant will be required to have the property surveyed.” Condition No. 12 that “Any long term storage of vehicles is to be enclosed behind a site obscure fence.”** The Vice-Chairman, in conjunction with the Secretary of the Board of Adjustment, prepare and adopt written findings and conclusions that articulate and are consistent with the findings, conclusions and/or decisions made by the Board of Adjustment tonight. Motion carried. (Three in favor)

PLANNING DEPARTMENT REPORTS AND DISCUSSION – none

The Vice-Chairman adjourned the Board of Adjustment hearing at 8:04:06 p.m.



R. DEAN BUROWS, VICE-CHAIRMAN

Recorder: Carel Hiatt