

THE FOLLOWING MEMO HAS BEEN
SCANNED WITHOUT EXHIBITS FOR THE
HEARING TO BE CONDUCTED BY THE
BENTON COUNTY

BOARD OF ADJUSTMENT

THURSDAY, JULY 12, 2012 AT 7 P.M.
BENTON COUNTY PLANNING ANNEX –
1002 DUDLEY AVENUE – PROSSER, WA

IF YOU WISH TO OBTAIN A COMPLETE
PACKET INCLUDING THE EXHIBITS
PLEASE CONTACT THE
BENTON COUNTY PLANNING DEPARTMENT
BY CALLING 736-3086 FROM TRI-CITIES
OR 786-5612 FROM PROSSER
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Benton County Planning Department

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

MEMO DATE: JUNE 20, 2012
HEARING DATE: JULY 12, 2012
TO: BENTON COUNTY BOARD OF ADJUSTMENT
FROM: CLARK A. POSEY, SENIOR PLANNER 
BENTON COUNTY PLANNING DEPARTMENT
RE: VARIANCE APPLICATION – VAR 12-04

**APPLICANTS/
PROPERTY OWNERS:** CARLOS & DEYSI AMAYA
18519 S 2198 PR SE
KENNEWICK, WA 99337

MAILING ADDRESS: CARLOS/DEYSI AMAYA
P O BOX 3294
PASCO, WA 99301

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 storage building constructed only six (6) feet from the property line, making this variance four (4) feet. The parcel is located in the Rural Lands 5 Zoning District.

BACKGROUND:

Site Location: The site is located at 18519 S. 2198 PR SE. Kennewick, WA 99337 on a lot located in the Southwest Quarter of the Northeast 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

- 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 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.

FINDINGS OF FACT:

The following findings of fact and comments were received as of the date of this memo being June 15, 2012. Any comments received after the completion of this staff memo or obtained during the advertised public hearing of VAR 12-04 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 Carlos & Deysi Amaya 18519 S 2198 PR SE Kennewick, WA 99337
2. The applicants are requesting approval for a variance to BCC 11.16A.080(4)) for a reduction of four (4) feet from the required ten (10) foot side yard setback to allow the applicant to keep an existing storage building on the property.
3. This site is located at 18519 S. 2198 PR SE. Kennewick, WA 99337 in the Southwest Quarter of the Northeast Quarter of the Northeast Quarter of Section 15, Township 8 North, Range 30 East W.M.
4. The application for VAR 12-04 was submitted to Benton County on June 8, 2012 and was determined a complete application for processing on June 11, 2012.

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 12-04 was published on June 8, 2012, 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 July 12, 2012.
7. The Benton County Building Department required that a building permit be obtained.
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. Benton County Public Works did not have any comments on this variance request.
12. Columbia Irrigation District comments: "This is ok with CID as long as all easements on the west end of the property are not violated."
13. A reduction in the side yard setback would allow the applicant to leave the existing storage building within 6 feet of the property line.
14. 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.
15. 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.
16. 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;
17. The problem sought to be addressed may be common for other properties in the surrounding area, if other properties have not constructed buildings on their property lines.
18. This building was constructed and was existing within the side yard setback and was being used as living space by the owners prior to the applicants purchasing the property in November of 2010. They were renting the main house on the property to someone else and living in this structure.

When the applicants purchased the property they continued to use the buildings in this same way, not knowing that this was a code violation and not allowed.

After a Code Enforcement visit, a violation notice was issued to the applicants. Immediately after the applicants were informed of this, they told the renters they would have to move. Now, the current owners are living in the residence themselves.

This other building has lost its identity or the capabilities to be used as a living unit and now has been turned into storage. A note from the Code Enforcement Officer states the property owner is making every effort to comply with the codes of Benton County

19. The Benton Franklin Health District had the following comments: "This office has no objections provided the proposed reduction in setback and addition to the structure does not impact the existing on-site sewage system nor area to replace said system. Please note that this office has record of a single on-site sewage system located on the parcel. In addition, it has been requested by our office that all plumbing in what has been used as a second dwelling be removed from the structure."

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 12-04 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 addition.
4. The applicant for Variance VAR 12-04 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.

5. If the application is denied the building must be moved to conform to the **BCC 11.16A.080 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.