

**THE FOLLOWING MEMOS HAVE BEEN
SCANNED WITHOUT EXHIBITS FOR
THE HEARING TO BE CONDUCTED BY
THE BOARD OF ADJUSTMENT.**

**ON
THURSDAY
JULY 11, 2013 AT 7 P.M.**

**NOTE THE ADDRESS:
BENTON COUNTY PLANNING
DEPARTMENT – PLANNING ANNEX
1002 DUDLEY AVENUE – PROSSER
IF YOU WISH TO OBTAIN A COMPLETE
PACKET INCLUDING THE EXHIBITS
PLEASE CONTACT THE
BENTON COUNTY PLANNING
DEPARTMENT - 736-3086/TRI-CITIES
OR
786-5612/PROSSER
OR EMAIL AT
PLANNING.DEPARTMENT@CO.BENTON.WA.US**

**CONDITIONAL USE
PERMIT**

CUP 13-04

APPLICANT:

CONRAD RUSSELL

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: MAY 22, 2013

MEETING DATE: JUNE 6, 2013

TO: BENTON COUNTY BOARD OF ADJUSTMENT

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

RE: CONDITIONAL USE PERMIT APPLICATION – CUP 13-04

APPLICANT: CONRAD RUSSELL
100513 W. OIE HIGHWAY
PROSSER, WA 99350-7675

PROPERTY OWNERS: CONRAD/DESIREE RUSSELL
100513 W OIE HIGHWAY
PROSSER, WA 99350

SPECIFIC REQUEST

The applicant Conrad Russell is requesting a conditional use permit for the operation of construction equipment to remove gravel and base rock from the old railroad right-of-way, crush, load and remove gravel for sale off-site.

BACKGROUND

Site Location: The site is located on the old railroad right-of-way in the Southwest Quarter of the Northwest Quarter of Section 23, Township 9 North, Range 25 East, W.M. The parcel is 11.3 acres in size.

Land Use: The site is currently undeveloped. The surrounding properties are developed with single family residential homes and pastures.

Zoning: The site and surrounding properties are zoned Rural Lands 5.

Comp Plan: The Benton County Comprehensive Plan designated the site Rural Lands 5.

State Environmental Policy Act: Conditional Use Permit Application CUP 13-04 is not categorically exempt from the requirements of the Washington State Environmental Policy Act. A Determination of Non-Significance (DNS) for EA 13-05 (DNS) was issued on April 26, 2013.

APPLICABLE DEVELOPMENT REGULATIONS

The Benton County Code Section 11.16A.06 (In the Rural Lands 5 District) states that: "Any use not authorized or approved pursuant to BCC 11.16A.030, .040, and .050 is prohibited by laws of Benton County or the State of Washington,

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 a conditional use permit is issued by the Board of Adjustment after notice and public hearing as provided by BCC 11.52.090 (d).

(d) A sand or gravel pit, stone quarry and similar use for the development of natural resources extracted on-site.

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

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

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

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

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

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

- (1) is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;
- (2) will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (3) would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (4) will be supported by adequate service facilities and would not adversely affect public services to the surrounding area;
- (5) would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district; and

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

FINDINGS OF FACT

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

1. The applicant is Conrad Russell, 100513 W. OIE Highway, Prosser, WA 99350-7675.
Property owners are Conrad/Desiree Russell 100513 W OIE Highway, Prosser, WA 99350-7675.
2. The applicant is requesting a conditional use permit to operate construction equipment to remove gravel and base rock from the old railroad right-of-way, sort, crush, load and remove gravel for sale off-site. Based on the information provided, this project is a reuse of existing material that was placed on the former railroad. No new native material is proposed to be extracted. Therefore, this project is not mining as defined in RCW 78.44.031(7)(8)&(13). 13 "Recycling" means the reuse of minerals or rock products. This parcel contains 11.3 acres and is not a buildable lot.

3. The application for Conditional Use Permit CUP 13-04 was submitted to Benton County on March 7, 2013 and was determined complete on March 8, 2013 with a complete letter being mailed on March 11, 2013.
4. The notice for the Benton County Board of Adjustment Open Record Hearing for Conditional Use Permit application CUP 13-04 was published on May 16, 2013 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 June 6, 2013.
5. Conditional Use Permit Application CUP 13-04 was reviewed under the requirements of the Washington State Environmental Policy Act. A Determination of Non-Significance (DNS) was issued on April 26, 2013.
6. The Benton County Comprehensive Plan designated the site and surrounding areas as "Rural Lands 5".
7. The applicant would have a portable rock crusher on site used for crushing rock for the excess spoils material, to be removed from the parcel. The applicant has not made application for a rock quarry but only to remove the rock used from the old railroad right-of-way. A rock quarry is an allowed use in this zone by a conditional use permit approved by the Board of Adjustment. Any use approved must be compatible with the principal uses of the underlying zone and surrounding land uses.
8. The surrounding area is not completely developed therefore the proposed use as shown in the application would not hinder or discourage the development of permitted uses on neighboring properties in the Rural Lands 5 Zoning District as a result of the location, size, noise and dust of the proposed use.
9. Based on the information provided, this project is a reuse of existing material that was placed and used as the base for the railroad tracks. However, in the future, if extraction of native material occurs and exceeds the thresholds defined below, a surface mine reclamation permit will be required from the Department of Natural Resources. RCW 78.44.031(17)(a) "Surface mine" means any area or areas in close proximity to each other, as determined by the department, where extraction of minerals results in: (i) More than three acres of disturbed area;(ii) Surface mined slopes greater than thirty feet high and steeper than 1.0 foot horizontal to 1.0 foot vertical; or (iii) More than one acre of disturbed area within an eight acre area, when the disturbed area results from mineral prospecting or exploration activities.
10. Comments were received from the Washington State Department of Ecology, Benton County Public Works Department, Benton PUD, Sunnyside Valley

Irrigation District Benton County Building Department Benton Franklin Health Department, Benton County Fire Marshal, Kennewick Irrigation District and Washington State Department of Ecology.

11. The applicant will need to satisfy the requirements from Sunnyside Valley Irrigation District, Benton County Public Works, Washington State Department of Ecology, Department of Natural Resources, Benton County Fire Marshal, Kennewick Irrigation District, Benton PUD, Benton County Building Department, Benton Franklin Health District and Benton Clean Air Authority as additional permits from those agencies may be required.
12. The type of activity proposed is inherently noisy and dusty and the applicant does not address how noise and dust would be kept to a minimum. Noise must meet the criteria of BCC 6A.15.040 and the Benton Clean Air Authority regulates dust control under WAC 173-400-040. Applicant has not provided any information on dust control or its effects to the area.

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

CUP 13-04, based on the information presented at the public hearing and after making such findings that support that decision, the Planning Department recommends that the following conditions be included:

1. Applicant shall not conduct any of the activities, within the scope of Conditional Use Permit 13-04 until the applicant is in compliance with all conditions set forth herein. The applicant shall notify the Benton County Planning Department in writing when the conditions set forth herein have been completed. The Planning Department shall not issue the 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 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 provides for dust control as required under WAC 173-400-040(8)(a) by creating a dust control program approved by the Benton Clean Air Authority. The applicant shall continue to meet all such requirements while Conditional Use Permit - CUP 13-04 is in effect and that the proper permits have been issued by Benton Clean Air for the operation of a portable rock crusher, if used.
4. The applicant must have an approved Commercial Access Permit approved and issued by the Benton County Public Works Department per County Standard Plan 96-05.
5. Applicant must obtain approval for any work that may affect the Sunnyside Valley Irrigation District (SVID) easements or their right-of-way. A copy of such approval must be submitted to the Planning Department prior to work or extraction of materials in these identified areas.
6. The presence of customers/clients shall be limited to Monday through Friday between the hours of 8:00 a.m. to 6:00 p.m. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-04 is in effect.
7. Not more than three (3) vehicles marked to identify the business may be on the parcel at any one time. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-04 is in effect.
8. That any outdoor lighting associated with the proposed conditional use permit is deflected downward to avoid unnecessary glare on neighboring parcels. The

applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-04 is in effect.

9. If approved the permit will be site specific, all of the activity shall be located on the applicant's parcel contained in this application and no portion of the storage and stockpiling of material or equipment storage is to take place on any adjacent parcel. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-04 is in effect.
10. That the property owner/proprietor(s) of the business shall comply with all the requirements of the Benton County Building Department, Benton County Fire Marshal, Benton-Franklin Health Department, Benton County Public Works Department, Washington Department of Natural Resources, Washington State Department of Ecology, Benton Clean Air Authority and any other local, state and federal regulations pertinent to the conditional use permit 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 Conditional Use Permit CUP 13-04 is in effect.
11. Copies of any and all additional permits required by Benton County Public Works, Washington State Department of Ecology, Washington State Department of Natural Resources and Benton Clean Air Authority must be submitted to the Planning Department prior to operating any equipment and conducting any extraction of onsite materials.

**CONDITIONAL USE
PERMIT**

CUP 13-06

APPLICANT:

**MICHAEL
HUBBARD**

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, 2013

MEETING DATE: JULY 11 2013

TO: BENTON COUNTY BOARD OF ADJUSTMENT

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

RE: CONDITIONAL USE PERMIT APPLICATION/CUP 13-06

APPLICANT: MICHAEL HUBBARD
104806 E 1035 PR SE
KENNEWICK, WA 99338

PROPERTY OWNERS: VERNON/EVA HUBBARD
71129 ARENA ROAD
RICHLAND, WA 99352

SPECIFIC REQUEST

The applicant is requesting approval of a Conditional Use Permit for the operation of firearms manufacturing, sales and repair business.

BACKGROUND

The site is located at 104806 E. 1035 PR SE Kennewick, WA 99338 in the Northeast Quarter of the Northwest Quarter of Section 14, Township 8 North, Range 28 East, W.M. on 4.9 acres.

Land Use: The site is currently developed with a single-family dwelling and an accessory building with the surrounding areas being a mixture of residential dwellings and agricultural uses.

Zoning/Comprehensive Plan: The site and surrounding properties are Rural Lands 5.

Washington State Environmental Policy Act: This project is categorically exempt from SEPA requirements.

APPLICABLE DEVELOPMENT REGULATIONS

The Benton County Code Section 11.16A.06 (In the Rural Lands 5 District) states that: "Any use not authorized or approved pursuant to BCC 11.16A.030, .040, and .050 is prohibited by laws of Benton County or the State of Washington"

1. BCC 11.16A.050 (w). Business Activities that are compatible with the principal uses and purpose of the underlying zone and the surrounding land uses may be conducted from an approved accessory building detached from all dwelling units if the following criteria as well as any other conditions required by the Board of Adjustment are satisfied BCC 11.16A.050(w).
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.

3. Benton County Code Section 11.52.090(d) states:
"Conditional Use/Special Permit—Permit Granted or Denied. A conditional use/special permit shall be granted only if the Board of Adjustment can make findings of fact based on the evidence presented sufficient to allow the Board of Adjustment to conclude that, as conditioned, the proposed use:
 - (1) is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;
 - (2) Will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that

associated with any other permitted uses in the applicable zoning district;

- (3) Would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (4) Will be supported by adequate service facilities and would not adversely affect public services to the surrounding area;
- (5) would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district; and

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

FINDINGS OF FACT

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

1. The owners of the property are Vernon & Eva Hubbard 71129 Arena Rd, Richland, WA 99352. The applicant is Michael Hubbard. The site location is 104806 E. 1035 PR SE Kennewick, WA 99338 in the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of Section 14, Township 8 North, Range 28 East, W.M.
2. The applicant is requesting approval of a Conditional Use Permit for the operation of a firearms manufacturing, sales and repair business.
3. The application for CUP 13-06 was submitted to Benton County on May 20, 2013 and was deemed complete for processing on May 21, 2013.
4. The notice for the Benton County Board of Adjustment Open Record Hearing for application CUP 13-06 was published on June 19, 2013 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 11, 2013.

5. Conditional Use Permit Application CUP 13-06 is categorically exempt from the requirements of the Washington State Environmental Policy Act.
6. The site is currently developed with a single-family residence and outbuildings on the property.
7. The Benton County Comprehensive Plan designates the site and surrounding areas as "Rural Lands 5".
8. The surrounding areas have been developed with residential structures and agricultural uses so the proposed use as shown in the application would not hinder or discourage the development of permitted uses on neighboring properties in the Rural Lands 5 Zone.
9. Benton Franklin Health District comments:
 1. After searching through our database we were unable to locate any septic system records for this property. However, from the plot plan that was submitted by the applicant it would appear that the Shop that will be used for the proposed business was built a significant distance away from the on-site septic system. It does not appear that what is being proposed will encumber or impact the existing drainfield.
 2. From our review of the application it appears that Mr. Hubbard will not hire any non-resident employees for this business. It would also seem very unlikely that this type of business would create a situation where members of the public would be utilizing water from the single family well serving this property. Therefore it will not be required for the well to be upgraded to a public water supply.

Prior to such time that Mr. Hubbard would like to hire non-resident employees for this proposed business this office will need to be contacted to discuss the requirements for upgrading the well and on-site septic system. I will be forwarding this application to Jim Coleman (Solid Waste Specialist at BFHD) to determine if there are any additional requirements from this office regarding the disposal of materials used in the manufacturing of these firearms. If he has additional comments we will get them over to you right away, have a good evening.

10. Benton County Building Department commented, "Building Permits will be required".
11. The Benton County Public Works Department comments: "Because the application is for a business, the approach of 1035 PR into Badger Road must be paved."
12. The applicant has requested that the business hours of operation be Monday thru Friday, 6:00 p.m. to 9:00 p.m. and by appointment.
13. Applicant has not requested any signage for this business activity.
14. Kennewick Irrigation District did not have any comments.
15. Benton County Fire Marshal did not have any comments.
16. Benton County Sheriff's comments: "No warrants or criminal history and this search did not include other jurisdictions."
17. If this application is approved the Planning Department would recommend that the Board of Adjustment emphasize that he must keep the property picked up and cleaned up and that all waste created in association with the business as a result of this conditional use permit be disposed of off-site in a timely manner.

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 13-06, based on the information presented at the public hearing and after making such findings that support that decision, the Planning Department recommends that the following conditions be included:

1. Applicant shall not conduct any of the activities within the scope of Conditional Use Permit 13-06 until the applicant is in compliance with the following conditions. 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 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 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. For zoning restrictions, all of the business activities must be contained to the areas located within the site plan submitted with the application.
4. That the applicant continues to comply with the Benton Franklin Health District codes and regulations. Any changes or modifications to the originally submitted plan must be approved by the Health District and verification

provided to the Benton County Planning Department. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-06 is in effect.

5. No parking within any part of the road right of way will be allowed. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-06 is in effect.

6. That the presence of customers/clients and non-resident employees at the business activity shall be limited to Monday thru Friday, 6:00 p.m. to 9:00 p.m. and by appointment. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-06 is in effect.

7. That any proposed outdoor lighting associated with this conditional use permit is deflected downward to avoid unnecessary glare on neighboring parcels. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-06 is in effect.

8. That the property owner and the proprietor(s) of the business shall comply with all the 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 conditional use permit pursued. The requirements of or permission granted by the Board of Adjustment shall not be construed as an exemption from such regulations.

9. The Benton County Planning Department, Benton County Building Department, the Benton County Fire Marshal and the Benton-Franklin District Health District must approve any changes or modifications to the original submitted application. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-06 is in effect.

10. That any waste created in association with the business as a result of this conditional use permit must be disposed of off-site in a timely manor and in compliance with all local, state and/or federal regulations. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-06 is in effect.

11. The Benton County Public Works Department requires that the approach from 1035 PR onto Badger Road be paved. The applicant will need to contact the Benton County Public Works Department.

12. As the applicant will utilize a private road for access to the residence it will also utilize the same access for the manufacturing, sales, and repair of firearms business. The County cannot give approval to the use of the private road for a commercial use. Only the approval for the action performed on the lot as an operation of firearms manufacturing, sales and repair business, if approved by the board.

VARIANCE
REQUEST
VAR 13-04
APPLICANTS:
DOUGLAS
&
FRANCES
BLYE

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, 2013
HEARING DATE: JULY 11, 2013
TO: BENTON COUNTY BOARD OF ADJUSTMENT
FROM: CLARK A. POSEY, SENIOR PLANNER 
BENTON COUNTY PLANNING DEPT.
RE: VARIANCE APPLICATION – VAR 13-04

**APPLICANTS/
PROPERTY OWNERS:** DOUGLAS & FRANCES BLYE
33310 E. RED MOUNTAIN RD
BENTON CITY, WA 99320

SPECIFIC REQUEST

The applicants are requesting a variance to BCC 11.16A.080(4), which is a setback of twenty five (25) feet from the existing easement for any building. The variance would allow the applicants/owners to leave the newly constructed 24'x 30' shop only twenty-two (22) feet from the property line instead of the required twenty five (25) feet, making this variance three (3) feet. The parcel is located in the Rural Lands 5 Zoning District.

BACKGROUND

Site Location: The site is located at 33310 E. Red Mountain Rd. Benton City, WA 99320 on Lot 3 of Short Plat 580 in Section 3, Township 9 North, Range 27 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 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. BCC 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 20, 2013. Any comments received after the completion of this staff memo or obtained during the advertised public hearing of VAR 13-04 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 comment period of the open public hearing.

1. The property owners/applicants are Douglas & Frances Blye – 33310 E. Red Mountain Rd – Benton City, WA 99320.
2. The applicants are requesting approval for a variance to BCC 11.16A.080(4) to construct a 24'x30' garage on the property. (already permitted and constructed)
3. The site is located at 33310 E. Red Mountain Rd. Benton City, WA 99320 on Lot 3 of Short Plat 580 in Section 3, Township 9 North, Range 27 East, W.M.
4. The application for VAR 13-04 was submitted to Benton County on May 22, 2013 and was determined a complete application for processing on May 22, 2013.
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 13-04 was published on June 19, 2013, 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 11, 2013.
7. The Benton County Building Department required that a building permit be obtained. (building permit was issued prior to construction).
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 reviewed the variance request and had no objections.
10. Benton REA had no comments or concerns regarding this request.
11. Benton County Public Works did not have any comments on this variance request.
12. Special circumstances such as lot size, slope, topography or necessary size or shape of the building are 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 contractor for the applicants constructed the garage within the 25' setback of the access easement, so the building is too close to the easement by 3 feet. All of the county permits were obtained, but, the location of the building is three (3') feet into the setback. When the applicants found out this was wrong, they came in to rectify the problem.
16. It must be shown that a material hardship unwarranted within the intent of this Code will exist if the variance is not granted, and that the hardship cannot be remedied by other means. The hardship demonstrated must not be self-created and must relate to the land itself and not to problems personal to the applicant. The variance permitted shall be the minimum variance which will mitigate the hardship.

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 13-04 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 supply a copy of the building permit from the Benton County Building Department for the construction of the garage.
4. The applicant for Variance VAR 13-04 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. If the application is denied the building must be constructed to conform to BCC 11.16A.080(a)

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

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.