

THE FOLLOWING MEMOS HAVE BEEN  
SCANNED WITHOUT EXHIBITS FOR THE  
HEARING TO BE CONDUCTED BY THE  
BENTON COUNTY

BOARD OF ADJUSTMENT

THURSDAY, SEPTEMBER 6, 2012 - 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

OR EMAIL TO

PLANNING.DEPARTMENT@CO.BENTON.WA.US

**CONDITIONAL USE  
PERMIT**

**CUP 12-03**

**APPLICANTS:**

**NOLAN/KIM MURRAY**

# 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:** AUGUST 24, 2012  
**MEETING DATE:** SEPTEMBER 6, 2012  
**TO:** BENTON COUNTY BOARD OF ADJUSTMENT  
**FROM:** CLARK A. POSEY, SENIOR PLANNER   
BENTON COUNTY PLANNING DEPT.  
**RE:** CONDITIONAL USE PERMIT APPLICATION – CUP 12-03

**APPLICANTS/  
PROPERTY OWNERS:** NOLAN/KIM. MURRAY JR  
87801 W. OLD INLAND EMPIRE HWY  
PROSSER, WA 99350 ;

**SPECIFIC REQUEST:** The applicants, Nolan/Kim Murray Jr., 87801 W. Old Inland Empire Hwy are requesting a conditional use permit for the operation of commercial kennel for the keeping of up to 24 dogs not for breeding or retail, but for their personal pets only.

## **BACKGROUND:**

Site Location: The site is located on a developed site off in Section 27, Township 9 North, Range 25 East, W.M.

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

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

Comprehensive Plan Designation: "Rural Lands 5".

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

## **APPLICABLE DEVELOPMENT REGULATIONS:**

The Benton County Code Section 11.16A.050 (f) (In the Rural Lands 5 Zoning District) states that: "A Commercial Kennel may be allowed on a single parcel of record by conditional use permit issued by the Benton County Board of Adjustment after notice and public hearing as provided in BCC 11.52.090."

Benton County Code Section 11.52.090(a) states:

"Conditional Use/Special Permit-General Standards. The conditional use/special permit application process allows the Board of Adjustment to review the location and design of certain proposed uses, the configuration of improvements, and the potential impacts on the surrounding area. The application process also allows the Board of Adjustment to ensure development in each zoning district protects the integrity of that district.

The notice, hearing, decision and enforcement procedures are as set forth herein and in Section 2.

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

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

Benton County Code Section 11.52.090(d) states:

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

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

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

## **FINDINGS OF FACT:**

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

1. The applicants/property owners are Nolan/Kim Murray Jr. 87801 W. Old Inland Empire HWY GRANDVIEW, WA 99350-9666
2. The applicants are requesting approval of a Conditional Use Permit for the operation of a commercial kennel for up to 24 adult dogs six months of age or older on a 9.3-acre parcel of land to keep as personal pets, not for breeding or retail sales.
3. Conditional Use Permit CUP 12-03 was submitted to Benton County on July 30, 2012, and declared complete on August 1, 2012.
4. The notice for the Benton County Board of Adjustment Open Record Hearing was published on August 23, 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 September 6, 2012.
5. Conditional Use Permit CUP 12-03 is categorically exempt from the requirements of the Washington State Environmental Policy Act, under WAC 197-11-800(13).
6. The site is currently developed with a single-family dwelling and outbuildings. The surrounding properties are developed in both residential and agricultural purposes.
7. The site and surrounding properties are zoned Rural Lands 5.
8. The Benton County Comprehensive Plan designated the site and surrounding areas as "Rural Lands 5".
9. The Benton County Department of Public Works requires that the approach onto Old Inland Empire HWY Rd. will have to be paved to Benton County 96-05 Standards if the kennel becomes a commercial operation.
10. The Benton-Franklin Health District requires the following:  
A system must be installed on this site to adequately collect and treat all of the waste generated by these animals. The facility must be served by an on-site sewage disposal system that is permitted, installed and approved in accordance with Benton-Franklin District Board of Health Rules and Regulations No. 2 for the intended use.
11. The Washington State Department of Ecology has commented that an on-site disposal of commercial wastes and wastewaters are illegal unless specifically approved by the Department of Ecology. This does include wastewaters sent to septic systems.
12. Typically, the Board of Adjustment has approved conditional use permit applications for dog kennels when the animals are housed in kennels indoors to minimize noise and with proper ventilation. The housing of dogs inside of residences is not permissible, for sanitary purposes.
13. The applicants did not address in their application how waste from the animals would be

handled. Any waste must be disposed of in accordance with state and local laws.

14. The conditional use permit application does not request any signage on the property, and will have no non-resident employees.
15. The proposed use would 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 Rural Lands 5 Zoning District such as schools, churches, libraries, community club houses, stills, packaging sheds and five borders and/or lodgers in any one family dwelling unit.
16. The proposed use as shown in the application would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the Rural Lands 5 Zoning District such as schools, churches, libraries, community club houses, stills, packaging sheds and five borders and/or lodgers in any one family dwelling unit.
17. The proposed use as shown in the application would be supported by adequate service facilities, if the conditions as requested by the Planning Staff were required. The proposed use would not adversely affect public services to the surrounding area. There is no evidence to support that the site would not be adversely affected. The residence on site is served by all the necessary services.
18. Sunnyside Valley Irrigation District commented: SVID does have a delivery structure, BN 59.32A #3,4,5 within the parcel for development. This structure is in the northwest corner of the above mentioned parcel. The proposed development will not affect our facility.

**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 CUP 12-03, based on the information presented at the public hearing and after making such findings that support that decision, the Planning Department recommends that the following conditions be included:

1. Applicants shall not conduct any of the activities within the scope of Conditional Use Permit CUP 12-03 until the applicants are in compliance with all the conditions set forth herein. The applicants shall notify the Benton County Planning Department in writing when the conditions set forth herein have been completed. The Planning Department shall not issue the 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 applicant's last known address at least twelve (12) days in advance of the upcoming Board of Adjustment meeting.
3. That the applicants continue to meet the requirements sent from the Benton-Franklin Health District to the Benton County Planning Department as outlined in the August 13, 2012, letter. The applicants are to provide the Planning Department with written verification that all of the Health District's requirements have been met. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-03 is in effect.
4. If the commercial sale of dogs becomes a normal activity on this parcel, the applicants must provide written verification from the Benton County Public Works Department that the approach onto Johnson Rd. has been constructed to Benton County 96-05 Standards. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-03 is in effect.
5. The requested conditional use permit shall not be granted for the keeping of more than twenty-four (24) dogs (**6 months and older**) on the site. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-03 is in effect.
6. That the dogs be kept in a kennel that is indoors with insulated walls and ceiling and sheetrock interior and concrete flooring for sanitation to minimize noise and to keep proper ventilation, i.e. heated in the winter and air conditioned in the summer. The housing of dogs inside a residence is not permissible due to sanitary conditions. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-03 is in effect.

7. That the property owner and the proprietor(s) of the business shall comply with all requirements of the Benton County Building Department, the Benton County Fire Marshal, the Benton-Franklin Health Department, and all other local, state and federal regulations pertinent to the 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 applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-03 is in effect.
8. A fence must be constructed around the kennels that will house the dogs. Height of fence shall be a minimum of four (4) feet for small dogs and six (6) feet for large dogs and shall be maintained in good repair for segregation and separation of the dogs. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-03 is in effect.
9. That any waste created as a result of the conditional use permit must be disposed of in compliance with all local, state and/or federal regulations. In this application a system must be installed on site to adequately collect and treat all of the waste generated by the animals contained on the property. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-03 is in effect.
10. As requested in the application, the proposed kennel by the applicants will not have any non-resident employees and no signs will be used to identify the property as a kennel. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-03 is in effect.

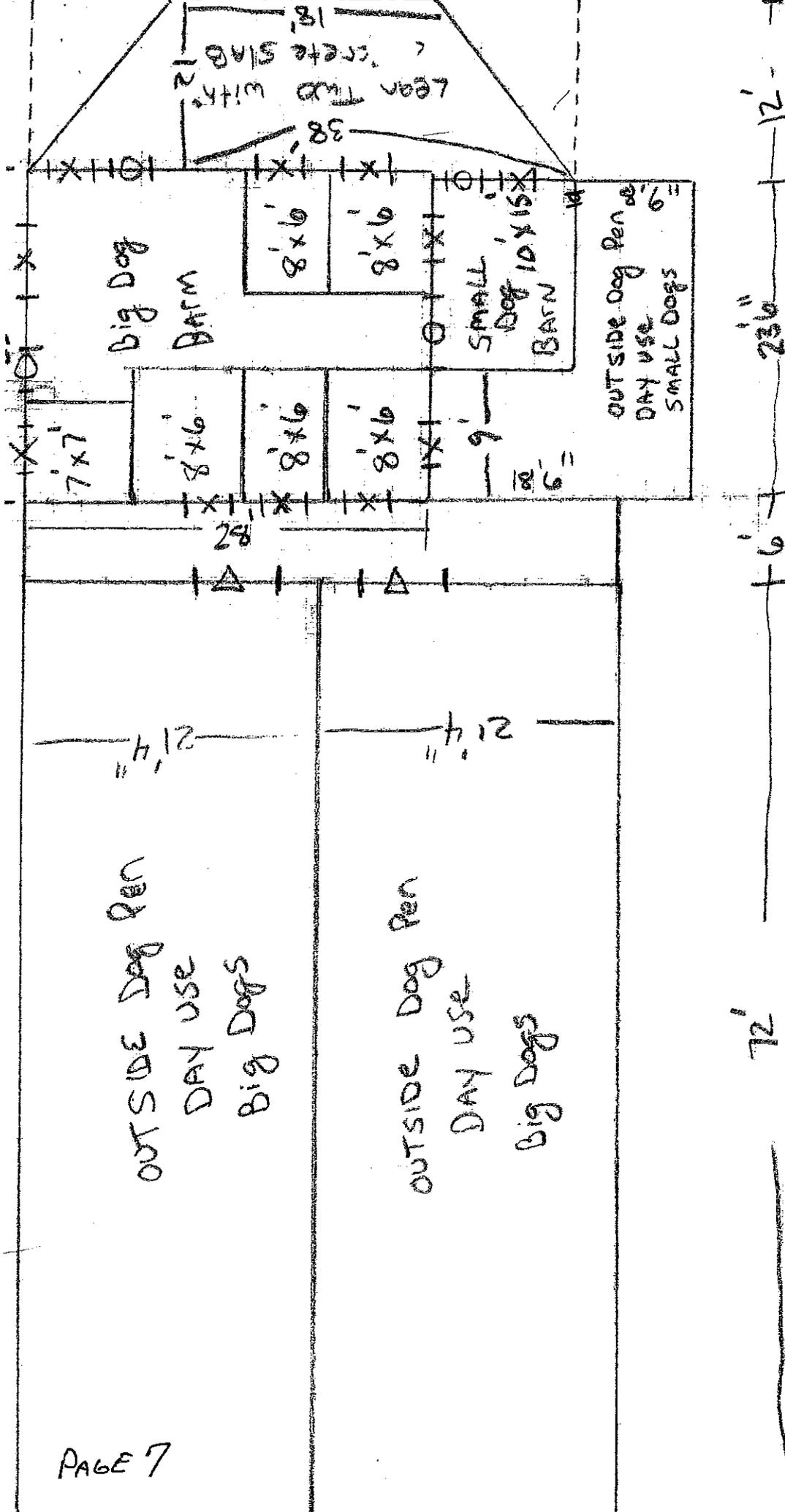


Benton County  
Planning  
Department

SECTION 27, TOWNSHIP 9 NORTH, RANGE 25 EAST, W.1.M.  
CONDITIONAL USE PERMIT CUP # 12-093  
NO. AN AND KIM MURRAY  
MAP PRINTED: JULY 31, 2012

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O = DOORS 32" x 70"  
 X = WINDOWS 40" x 24"  
 Δ = GATES 6' x 6'  
 Big Dog BARN 25' x 28' Also Connected SMALL Dog BARN 15' x 10'  
 Lean Two 38' x 12' and Concrete SLAB under Lean Two 4' x 8'

1" = 10' SCALE

**CONDITIONAL USE  
PERMIT**

**CUP 12-04**

**APPLICANT:**

**NADINE JOHNSON**

# 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:** AUGUST 24, 2012

**MEETING DATE:** SEPTEMBER 6, 2012

**TO:** BENTON COUNTY BOARD OF ADJUSTMENT

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

**APPLICANTS/  
PROPERTY OWNERS:** PATRICK/NADINE B. JOHNSON  
98104 E CLOVER ROAD  
KENNEWICK, WA 99338

**RE:** CONDITIONAL USE PERMIT APPLICATION – CUP 12-04

**SPECIFIC REQUEST:** The applicant, Nadine Johnson, is requesting approval of a Conditional Use Permit Application CUP 12-04 to operate a home occupation business with on-site sale of home décor items, such as curtains, rugs and lamps in a Rural Lands 1 Zoning District.

**BACKGROUND:**

Site Location: The existing dwelling is located at 98104 E. Clover Road, on Lot 13 of the El Rancho Reata #4 addition to Benton County in the Northeast Quarter of Section 3, Township 8 North, Range 28 East, W.M.

Land Use: The site is developed with a 1300 square foot dwelling. The proposed home occupation will be in a 200 square foot attached garage.

Zoning: The subject property and surrounding properties are currently zoned "Rural Lands 1".

Comprehensive Plan: The Benton County Comprehensive Plan designates this site as "Rural Lands 1".

State Environmental Policy Act: Conditional Use Permit Application CUP 12-04 is categorically exempt from the requirements of the Washington State Environmental Policy Act.

**APPLICABLE DEVELOPMENT REGULATIONS:**

1. The Benton County Code Section 11.14.050 (In the Rural Lands 1 Zoning District) states that: "The following uses may be permitted on a single parcel of record within a Rural Lands One Acre District by Conditional Use Permit is issued by the Board of Adjustment after notice and public hearing as provided by BCC 11.52.090."

Subsection (g) states: "Home Occupation involving the display and sale of products on the premises; provided, a home occupation permit is also required under BCC 11.14.090 through 11.14.120."

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

"Conditional Use/Special Permit-General Standards. The Conditional Use/Special Permit application process allows the Board of Adjustment to review the location and design of certain proposed uses, the configuration of improvements, and the potential impacts on the surrounding area. The application process also allows the Board of Adjustment to ensure development in each zoning district protects the integrity of that district. The notice, hearing, decision and enforcement procedures are as set forth herein and in Section 2.

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

Once granted a Conditional Use 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 11.14.090 states:

11.14.090 HOME OCCUPATION--GENERAL CRITERIA. Except for those types of activities identified in BCC 11.14.110, all home occupations that meet the following criteria are allowed within a legally existing dwelling unit upon issuance of a home occupation permit by the Planning Department:

(a) There must be a dwelling unit on the parcel, and a proprietor of the home occupation must reside in the dwelling unit.

(b) No more than two (2) non-resident persons, whether they work on site or not, may be employed by, or be partners or shareholders in the home occupation.

(c) The total area for all home occupations on the premises, including all storage spaces used for such home occupations, shall not occupy more than the lesser of:(i) thirty (30) percent of the dwelling unit's floor area and any attached garage; or (ii) six hundred (600) square feet within a dwelling unit or attached garage.

(d) No more than one (1) non-illuminating sign, with a maximum area of four (4) square feet, extending a maximum height of six (6) feet above grade, shall be permitted in connection with the home occupation. The posting of such sign is limited to the parcel on which the home occupation is located. On-street (inside the road right-of-way) sign posting and any sign posting that interferes with the line-of-sight for road intersections are prohibited.

(e) Noise, lighting, dust, smoke and other potential off-site impacts of the home occupation shall be controlled as follows: noise shall not exceed sixty-five (65) decibels at any property line; smoke, spray, airborne dust, noxious odors or other particulate materials shall not migrate to adjacent properties; lights must be hooded to illuminate downward and minimize the impact to adjacent properties; interference with neighborhood radio, TV, or phone reception and transmission shall not occur.

(f) Only one (1) vehicle marked to identify the home occupation is allowed on the parcel at any one time, excluding vehicles parked within an enclosed structure. No other on-site, outside storage of vehicles, equipment, and/or supplies (including building materials and equipment such as lumber, plasterboard, pipe, paint, and heavy equipment) is allowed in connection with a home occupation.

(g) Once a home occupation permit is issued, the Benton County Fire Marshal may require that the parcel be placed on the Fire Marshal's Annual Inspection List.

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

"Conditional Use/Special Permit—Permit Granted or Denied. A Special use/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;
- (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
- (6) is not in conflict with the goals and policies expressed in the current version of the County's Comprehensive Plan.

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."

**FINDINGS OF FACT:**

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

1. The applicants/property owners for CUP 12-04 are Patrick & Nadine Johnson, 98104 E. Clover. Kennewick, WA 99338.
2. Conditional Use Permit Application CUP 12-04 is a Conditional Use Permit application to operate a Home Occupation involving the display and sale of products on the premises. The applicant is proposing to operate a business selling home décor from an existing 200 square foot attached garage.
3. The existing dwelling is located at 98104 E. Clover, on Lot 13 of Block 1 of the El Rancho Reata addition to Benton County in the Northeast Quarter of Section 3, Township 8 North, Range 28 East, W.M.
4. Conditional Use Permit Application CUP 12-04 was submitted to the Benton County Planning Department on August 6, 2012 and was determined a complete application for processing on August 7, 2012.
5. The application was routed for review to the Benton County Department of Public Works, Benton Franklin Health Department, Benton County Fire District No. 1, Benton County Building Office, Benton County Fire Marshall, Benton County Code Enforcement, Washington State Department of Health, Benton P.U.D., and Badger Mountain Irrigation District.

6. Conditional Use Permit CUP 12-04 is categorically exempt from the requirements of the Washington State Environmental Policy Act. Therefore, it did not require publication of a Notice of Application.
7. The notice for the Benton County Board of Adjustment Open Record Hearing for application CUP 12-04 was published on August 23, 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 September 6, 2012.
8. The property is zoned "Rural Lands 1". The Benton County Code Section ~~11.14.050(g) (In the Rural Lands 1 Zoning District)~~ allows a home occupation involving the display and sale of products on the premises; provided, a home occupation permit is also required under BCC 11.14.090 through 11.14.120.
9. The Benton County Fire Marshall commented that for fire protection one side of the driveway cannot be used for parking, which would eliminate three parking spaces.
10. The Benton Franklin Public Health District commented that they did not have any objections to the proposed business activity provided:
  - The business is served by an on-site sewage disposal system that is permitted, installed and approved in accordance with WAC 246-272 and Benton-Franklin Board of Health Rules and Regulations No. 2.
  - The business is served by an approved public water supply in accordance with WAC 246-290.
  - The drain field and replacement areas remain unencumbered and are not used for parking, driving over or storage of any vehicles or equipment. The plot plan submitted with this application indicates that a driveway to the shop is too close to the existing drain field contrary to the plot plan approved on 3-16-12 for the building of the shop in the north east corner of the lot.
11. The Benton County Department of Public Works requested that the access approach be paved according to their standard plan 96-05. During the Planning Department site visit, it appeared that the existing approach meets this requirement.
12. According to the application, no signs will be used for the proposed business.
13. The site and surrounding areas are developed with single family dwellings on 1 acre lots. There are no businesses located in the surrounding areas. The applicant is requesting that hours of operation be from 9 a.m. to 5 p.m. Friday and Saturdays only. There is adequate off street parking for the size of the business. On-street parking will not be allowed.

14. The application did not provide if the items for sale will be new or used. A year around garage sale facility, selling used furniture and items would not be compatible or allowed in a residential neighborhood in the Rural Lands 1 Zoning District. The existing structure should not be altered from the residential look.

**DISPOSITION OF THE APPLICANT'S REQUEST:**

**A conditional use/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;**
- (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**
- (6) is not in conflict with the goals and policies expressed in the current version of the County's Comprehensive Plan.**

If the Board of Adjustment decides to approve Conditional Use Permit Application CUP 12-04, 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 in the Board of Adjustment's approval:

1. Applicant shall not conduct any of the activities within the scope of Conditional Use Permit CUP 12-04 until the applicant is in compliance with all

conditions set forth herein. If the applicant has not complied with all such conditions and commenced legal operation within one year of this approval by the Board of Adjustment, the Board of Adjustment will declare the Conditional Use Permit CUP 12-04 null and void.

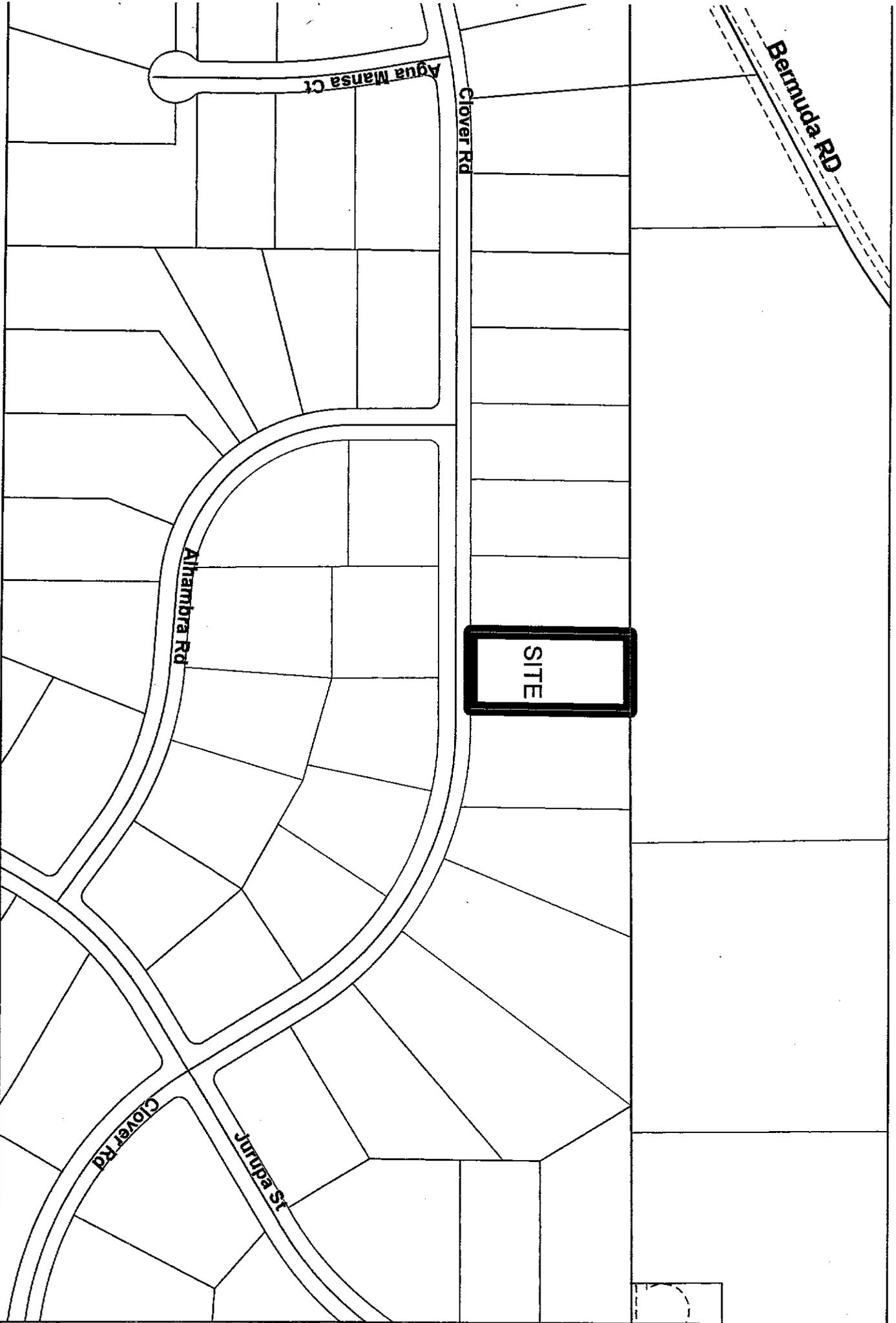
2. Conditional Use Permit CUP 12-04 is approved to operate a home occupation involving the display and sale of home décor products on the premises located within a Rural Lands 1 Zoning District. Only 200 square feet of an area is to be used for the proposed business.
3. The applicant provides written verification to the Benton County Planning Department that all requirements of the Benton Franklin Health Department have been complied with. The applicant shall continue to meet this requirement while Conditional Use Permit CUP 12-04 is in effect.
4. There shall be no exterior indication of the business, or variation from the residential character of the premises.
5. There shall be no employment of any person in connection with the business other than individuals actually residing in the residence.
6. The hours of operation of the business shall only be as described as below:
  - Fridays 9 a.m. to 5 p.m.
  - Saturdays 9 a.m. to 5 p.m.
7. There shall be no parking allowed on the County Road Right of Way.

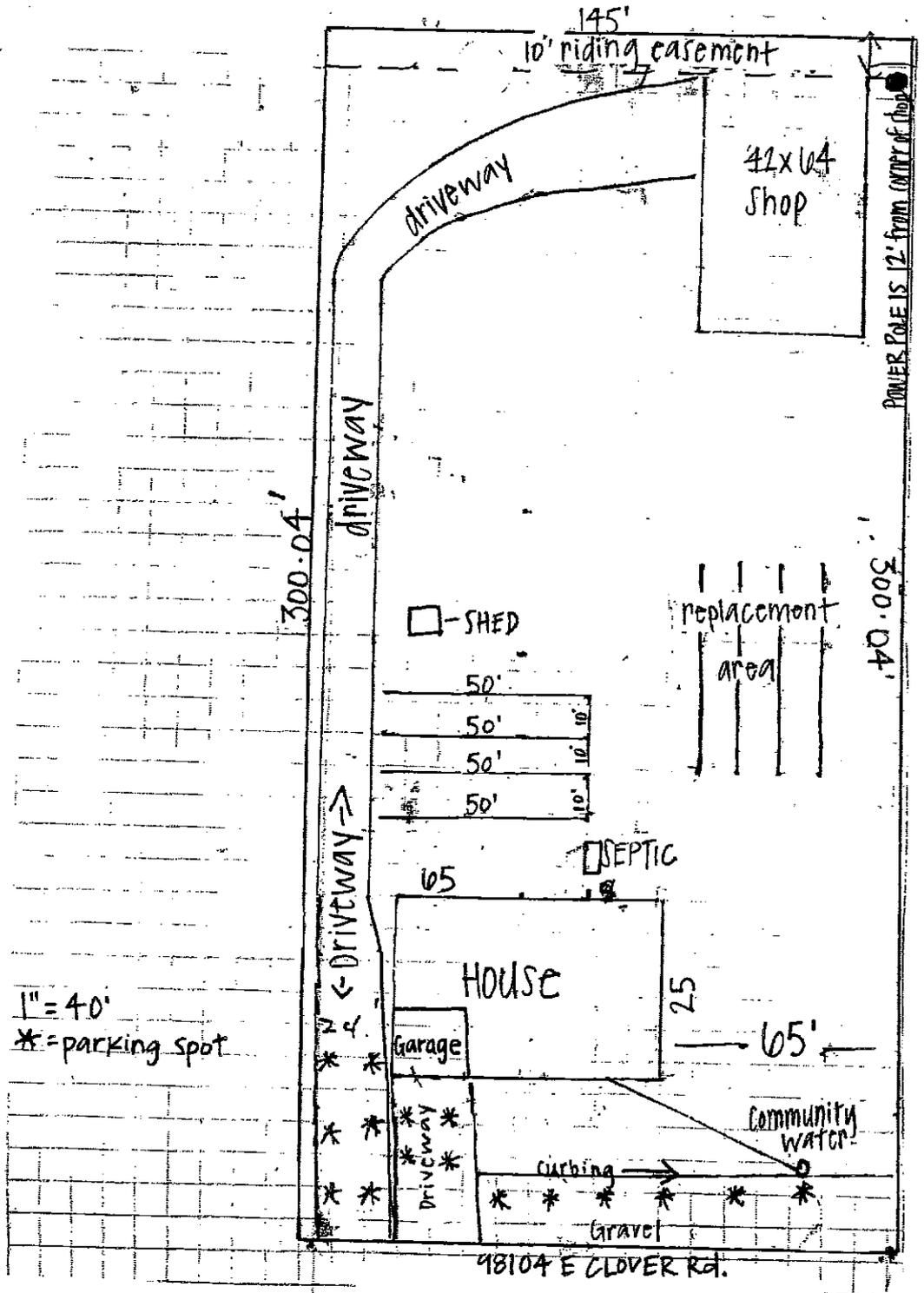


Benton County  
Planning  
Department

SECTION 3, TOWNSHIP 8 NORTH, RANGE 28 EAST, W.M.  
HOME OCCUPATION HO # 12-04  
NADINE JOHNSON  
MAP PRINTED: AUGUST 7, 2012

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AUG - 6 2012

Benton County  
 Planning Department

**CONDITIONAL USE  
PERMIT**

**CUP 12-05**

**APPLICANT:**

**SHELLEY WEBER**

# 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) 786-3629

**MEMO DATE:** AUGUST 24, 2012

**MEETING DATE:** SEPTEMBER 6 2012

**TO:** BENTON COUNTY BOARD OF ADJUSTMENT

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

**RE:** CONDITIONAL USE PERMIT APPLICATION – CUP 12-05

**APPLICANTS/  
PROPERTY OWNERS:** DELANE & SHELLEY WEBER  
10613 S. 2058 PR SE  
KENNEWICK, WA 99337

## **SPECIFIC REQUEST:**

The applicant is requesting approval of a Conditional Use Permit for the operation of a retail animal feed store and sale of miscellaneous merchandise.

## **BACKGROUND:**

Site Location: The site is located at 10613 S. 2058 PR SE Kennewick, WA 99337 in the Northeast Quarter of the Northwest Quarter of Section 9, Township 8 North, Range 30 East, W.M. on Lot 3 of Short Plat 441.

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: The site and surrounding properties are Rural Lands 5.

Comprehensive Plan: The Benton County Comprehensive Plan designation for the site and surrounding areas is "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 applicants/owners of the property are Delane and Shelley Weber. The site is located at 10613 S. 2058 PR SE Kennewick, WA 99337 in the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of Section 9, Township 8 North, Range 30 East, W.M. on Lot 3 of Short Plat 441.
2. The applicants are requesting approval of a Conditional Use Permit for the operation of an animal feed store and sales of miscellaneous merchandise with the Lot size being 1.18 Acres
3. The application for CUP 12-05 was submitted to Benton County on August 8, 2012 and was deemed complete for processing on August 13, 2012.
4. The notice for the Benton County Board of Adjustment Open Record Hearing for application CUP 12-05 was published on August 23, 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 September 6, 2012.
5. The Conditional Use Permit – CUP 12-05 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. The Benton-Franklin Health District has reviewed the conditional use permit application CUP 12-05 and has no objections provided:
  - 1) The facility is served by an approved public water supply in accordance with WAC 246-291.
  - 2) The facility is served by an on-site sewage disposal system that is permitted, installed and approved in accordance with Benton-Franklin District Board of Health Rules and Regulations No. 2 for the intended use.
  - 3) The lot must meet minimum land area requirements as specified in Benton-Franklin District Board of Health Rules and Regulations No. 2.
10. The Benton County Fire Marshal states that if future additions to the existing building exceed twenty-five hundred (2,500) feet, on site then fire protection will be required to be stored on site and be accessible to the fire truck.

11. Benton County Building Department commented, "Building Permits will be required".
12. The applicant has requested that the business hours of operation be Monday thru Saturday, 9:00 a.m. to 6:00 p.m.
13. Applicant stated only one sign would be used for the business activity.
14. If this application is approved the Planning Department would recommend that the Board of Adjustment emphasize that they 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.
15. The Benton County Public Works Office had the following comment: "Access to Finley Road is to be paved to 96-05 standards."

11. **NOTE:** If the Board of Adjustment does approve this conditional use permit the following condition may be required:

The applicants currently utilize 2058 Private Road for their residence and would be using the same PR for the operation of their business. The Board of Adjustment can only approve the Conditional Use Permit for the operation of the feed store not for the accessing onto the Private Road. The Board may condition the approval that the applicant obtain approval from all property owners who access onto 2058 PR granting permission for the applicant to operate a business onto 2058 PR.

**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 12-05, based on the information presented at the public hearing and after making such findings that support that decision, the Planning Department recommends that the following conditions be included:

1. Applicants shall not conduct any of the activities within the scope of Conditional Use Permit 12-05 until the applicants are in compliance with the following conditions. 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 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 applicants continue to comply with the Benton Franklin Health District codes and regulations and 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 applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-05 is in effect.
5. No parking within any part of the road right of way will be allowed. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-05 is in effect.
6. That the presence of customers/clients and non-resident employees at the business activity shall be limited to Monday thru Saturday, 9:00 a.m. to 6:00 p.m. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-05 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 applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-05 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 applicants shall continue to meet all such requirements while Conditional Use Permit CUP 12-05 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 12-05 is in effect.

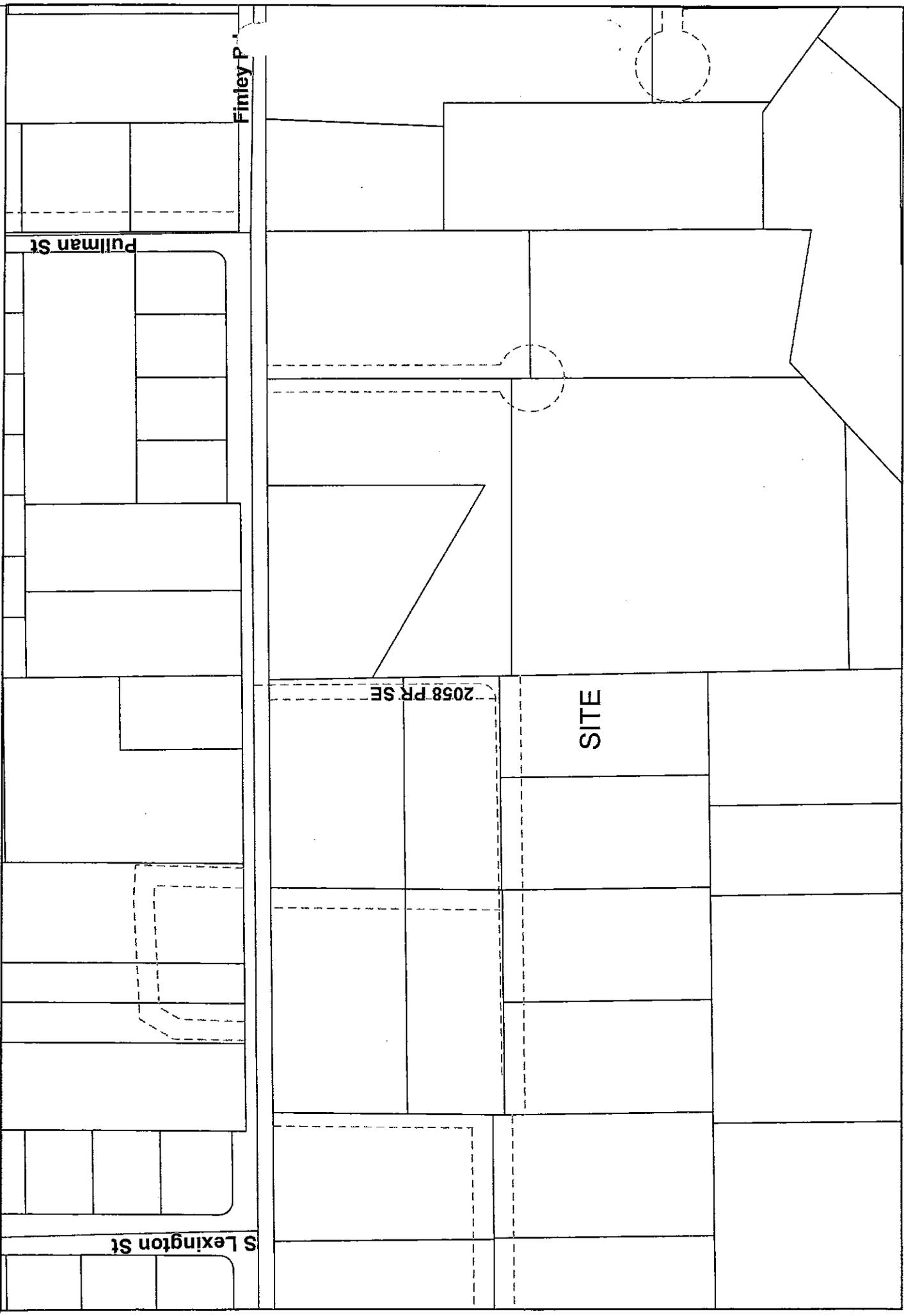
11. The Benton County Public Works Office will require that the access to Finley Road is to be paved to 96-05 standards.



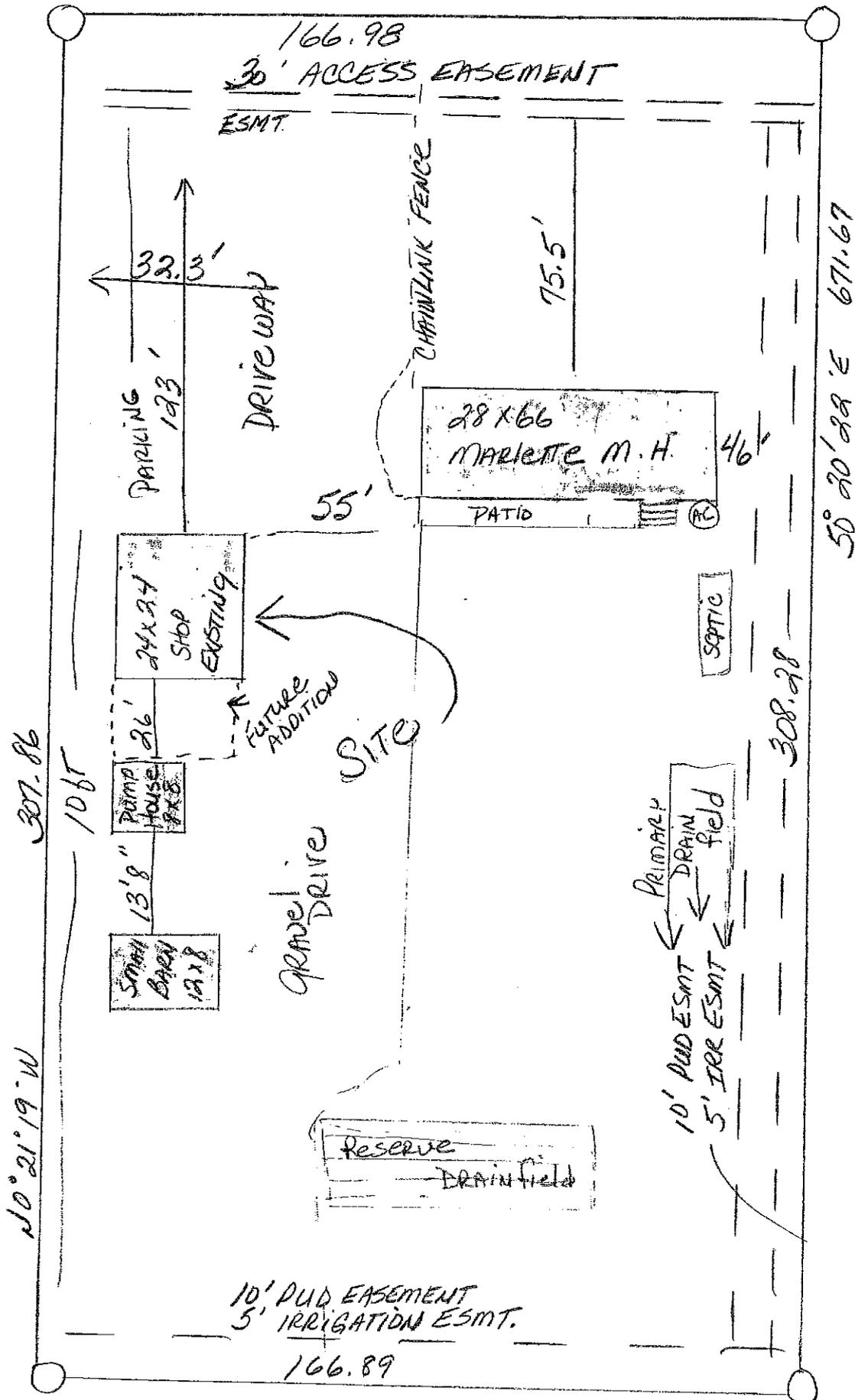
Benton County  
Planning  
Department

CUP 12-05

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Shelley Weber 10613 S. 2058 PRSE Kent WA 99337



**VARIANCE REQUEST**

**VAR 12-05**

**APPLICANT:**

**CLAIRE CHRISTENSEN**

# 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:** AUGUST 24, 2012

**HEARING DATE:** SEPTEMBER 6, 2012

**TO:** BENTON COUNTY BOARD OF ADJUSTMENT

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

**RE:** VARIANCE APPLICATION – VAR 12-05

**APPLICANTS/  
PROPERTY OWNERS:** CLAIRE CHRISTENSEN  
55603 N. FRAZIER RD  
BENTON CITY, WA 99320

**SPECIFIC REQUEST:** The applicant is requesting a variance to BCC 11.16A.080(a)(4), which is a side yard setback of ten (10) feet from the property line for any building. The variance would allow the applicant/owner approval to leave the porch/awning constructed only five and one half (5½) feet from the property line, making this variance four and one half (4½) feet. The parcel is located in the Rural Lands 5 Zoning District.

## **BACKGROUND:**

Site Location: The site is located at 55603 N. Frazier RD Benton City, WA 99320 on Lot 1, Short Plat 122 in Section 1, Township 9 North, Range 26 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 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 August 24, 2012. Any comments received after the completion of this staff memo or obtained during the advertised public hearing of VAR 12-05 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 owner/applicant is Claire Christensen
2. The applicant is requesting approval for a variance to BCC 11.16A.080(a)(4) for a reduction of four and one half (4½) 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 55603 N. Frazier RD Benton City, WA 99320. On a lot located in Section 1, Township 9 North, Range 26 East, W.M. being Short Plat #122 Lot 1.
4. The application for VAR 12-05 was submitted to Benton County on August 9, 2012 and was determined a complete application for processing on August 13, 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 12-05 was published on August 23, 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 September 6, 2012.
7. The Benton County Building Department required that a building permit be obtained.
8. The Benton Franklin Health District did not have any comments on this action.
9. Benton PUD had no comments or concerns regarding this request.
10. Benton County Public Works did not have any comments on this variance request.
11. A reduction of four and one half (4½) feet of the side yard setback would allow the applicant to leave the porch/awning within five and one half (5½) feet of 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 Benton County Code Enforcement Officer commented that the covered deck/porch was constructed without the necessary permits. When the applicant was made aware of this code violation, she came right in and applied for the variance request and for a building permit.

### **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 12-05 then the following are suggested conditions recommended by the Planning Department:

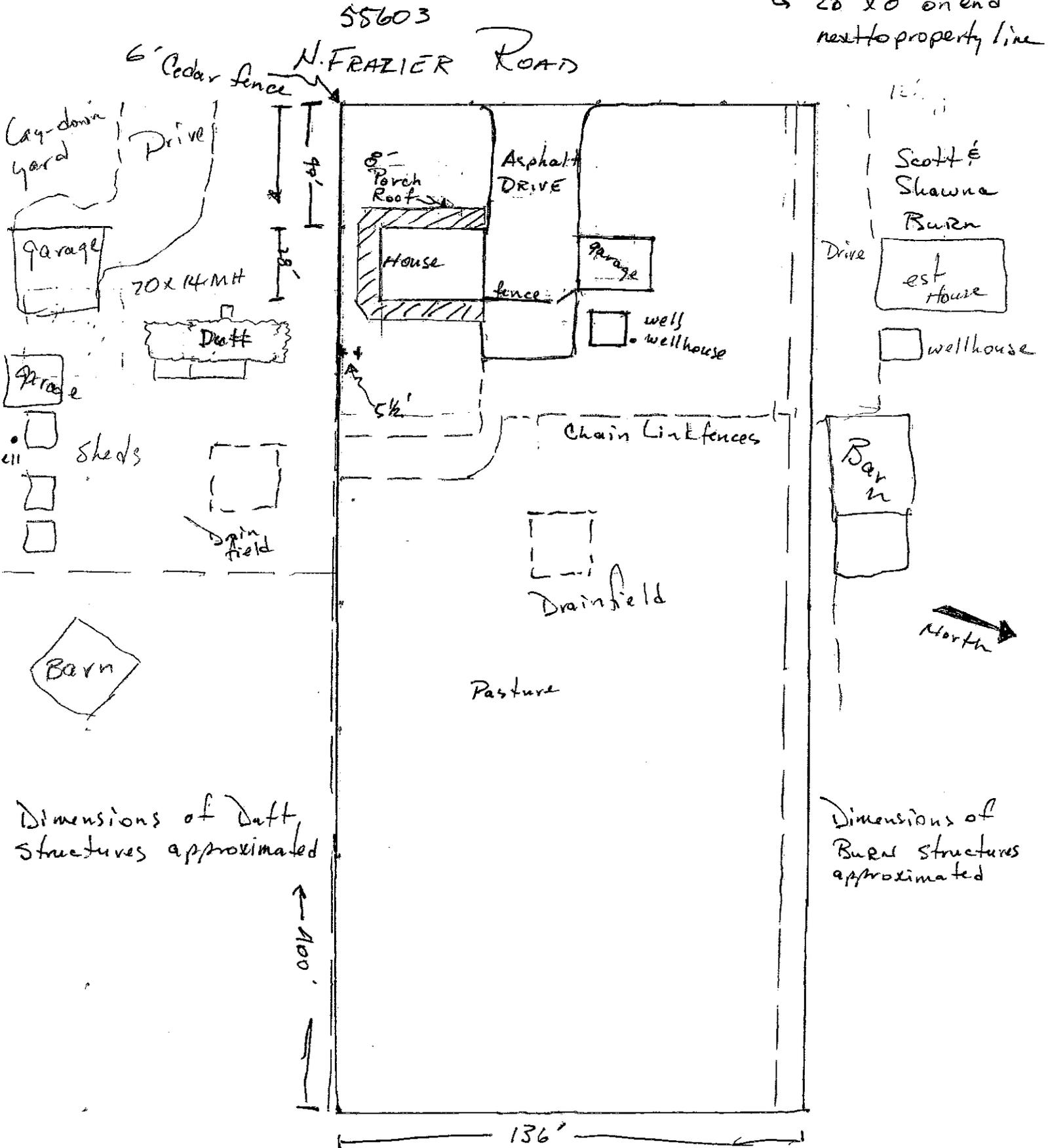
1. Any conditions imposed by the Board of Adjustment shall be completed prior to the Planning Department issuing the variance. The applicant shall notify the Benton County Planning Department in writing when the conditions set forth herein have been completed. The Planning Department shall not issue 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 addition.
4. The applicant for Variance VAR 12-05 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.

Scale - 1 square = 12 1/2 ft

Property size 136' x 400'  
House 49' x 28'  
Porch Roof 49' x 8'  
↳ front & back  
↳ 28' x 8' on end  
next to property line



Dimensions of Duff structures approximated

Dimensions of Buren structures approximated



Benton County  
Planning  
Department

SECTION 1, TOWNSHIP 9 NORTH, RANGE 26 EAST, W.M.  
VARIANCE VAR # 12-05  
CLAIRE CHRISTENSEN  
MAP PRINTED: AUGUST 21, 2012



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