

EXHIBIT LIST FOR VAR 2024-003 Clover Planning for Jonathan and Teri Carr

Hearings Examiner Staff Memo Exhibit List -July 19, 2024 hearing		
HEM 1.1	Staff Memo	July 12, 2024
HEM 1.2	Vicinity map	June 7, 2024
HEM 1.3	Application	June 7, 2024
HEM 1.4	Site Plan	June 7, 2024
HEM 1.5	Carr Variance Exhibit - A	June 7, 2024
HEM 1.6	Written Determination of Completeness	June 11, 2024
HEM 1.7	Agency review	June 11, 2024
HEM 1.8	Comment from City of West Richland	June 13, 2024
HEM 1.9	Comment from Benton County Fire Marshal	June 18, 2024
HEM 1.10	Willamette Heights Plat Map	June 20, 2024
HEM 1.11	Comment from Michelle and Oscar Cerda	July 10, 2024
HEM 1.12	Notice of Open Record Hearing	July 3, 2024
Exhibits Submitted During Hearing or while record remained open		
HEH 1.1		
HEH 1.2		
HEH 1.3		
HEH 1.4		
HEH 1.5		
HEH 1.6		
HEH 1.7		
HEH 1.8		
HEH 1.9		
HEH 1.10		

Community Development Department

Prosser Office: 620 Market Street, 1st Floor
Kennewick Office: 102206 East Wiser Parkway
www.bentoncountywa.gov



Planning Division

(509) 786-5612
planning.department@co.benton.wa.us
102206 E Wiser Parkway, Kennewick, WA 99338

HEM 1.1

**STAFF REPORT TO THE
BENTON COUNTY HEARINGS EXAMINER
Shane O’Neill for Jonathan and Teri Carr
Setback Variance**

FILE NO: VAR 2024-003

MEMO DATE: July 12, 2024

HEARING DATE: July 19, 2024

APPLICANT: Shane O’Neill with Clover Planning, 6904 Rogue Drive, Pasco, WA 99301.

OWNERS: Jonathan and Teri Carr, 3340 E Mt. Adams Drive, West Richland, WA 99353.

LOCATION: General Location: The property is located in the West Richland area of unincorporated Benton County; approximately 0.25 miles southeast of the intersection of S 38th Ave. and Mt. Adams View Dr.
Address: 3340 E Mt. Adams Drive, West Richland, WA 99353.
Legal: Section 8 of Willamette Heights (unrecorded) Lot 189.
Parcel Number: 108984020189000

PROPERTY SIZE: Approximately 2.50 Acres

AREA TO BE USED: The applicant is seeking a variance to reduce the 25-foot setback from a private access easement by 20 feet on the south and east property line.

LAND USE: Residential

ZONING: Rural Lands 5 Acre District (RL5)

COMPREHENSIVE PLAN DESIGNATION: Rural Remote

RECOMMENDATION:

The Planning Division is not providing a recommendation for this application. Should the application be approved, the Planning Division has provided nine (9) Findings of Fact and three (3) Conditions of Approval outlined in this Staff Report.

APPLICATION DESCRIPTION:

The applicant is requesting a variance from the setback requirements in BCC 11.11.090 (a)(1) regarding setbacks from any legally established boundary line of a private access easement in the Rural Lands Five Acre District. The applicant is proposing to construct a 3,750 square foot accessory building (detached garage) and the proposed variance would allow the detached garage to encroach twenty (20) feet into the required twenty-five (25) foot setback from an access easement.

A thirty-three (33) foot wide access easement is located on all sides of the subject parcel. If granted, this variance would result in a total setback of five (5) feet from the edge of the access easements or thirty-eight (38) feet from the south and east property lines.

The application for VAR 2024-003 (HEM 1.3) was submitted to the Benton County Planning Division on June 7, 2024.

The application was declared complete for processing on June 11, 2024. (HEM 1.6)

The application documents were distributed to reviewing agencies on June 11, 2024. (HEM 1.7)

The Benton County Hearings Examiner Notice of Open Record Hearing for application VAR 2024-003 was published on July 3, 2024 in the Prosser Record Bulletin. (HEM 1.12)

The Notice was mailed to property owners of record within 300 feet of the outer boundaries of the parcel on June 28, 2024.

The Open Record Hearing is scheduled for July 19, 2024.

APPLICABLE STANDARDS/ORDINANCES:

1. *Benton County Comprehensive Plan*
3.3.2.3 Rural Land Use Designations

Rural Remote is the predominant rural land use in the County. This land is located mostly between the agricultural lands (GMA Agriculture), Rural Transition, and the UGAs. Rural Remote land use is intended to enhance and preserve the County's rural character, which includes rural open space, low densities, wildlife habitat, public open space for outdoor recreational activities, and rural home sites on which a limited range of agricultural activities may be conducted. Allowable density in Rural Remote land use is 1DU/5acres.

2. *Benton County Code (BCC)*
Title 11 Zoning

Chapter 11.11.090 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 Chapter 15.02 BCC, Chapter 15.04 BCC, Chapter 15.06 BCC, Chapter 15.08 BCC, Chapter 15.12 BCC, and Chapter 15.14 BCC.

(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.

Chapter 11.50 Variance and Conditional Use

11.50.030 Variance

(a) Variance—General Standards. The variance application process allows the Hearings Examiner in specific cases, as provided in RCW 36.70.970, to grant a variance to the provisions of this title when it can be demonstrated that such variance is in harmony with the general purposes and intent of this title and is in accordance with the requirements of this section. No variance shall be granted to allow the use of property for purposes not authorized in the district in which the proposed use would be located, create lots with less than the minimum size required by the district, increase densities above that established for the district, or reduce/eliminate standards of other BCC Titles.

(d) Variance—Permit Granted.

- (1) A variance shall be granted only if the Hearings Examiner concludes that based on his or her 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, accessory 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 property in the surrounding area;
 - (vi) The variance would not be materially detrimental to the 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.
- (2) The Hearings Examiner 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 BCC 11.50.030(d)(1).

PUBLIC NOTICE:

The Public Notice Requirements for this application as per BCC 11.50.050(b) are as follows:

1. The Planning Division shall provide written notification for an open record hearing, subject to the rules and regulations set forth in RCW 36.70. Written notice shall be mailed at least twelve (12) days in advance of the open record hearing to the applicant and the owner of the parcel(s) to which the proposed variance or conditional use permit would apply, and to all owners of real property, as shown in the records of the Benton County Assessor, located within a distance of three hundred (300) feet of any portion of the applicable parcel, provided that if the owner of the parcel for which the proposed variance or conditional use permit is requested owns another parcel or parcels adjacent the parcel at issue, notification shall be mailed to owners of real property located within three hundred (300) feet of any portion of such adjacent parcels as well. Failure to receive the notice shall not invalidate any proceedings or decision in connection with the proposed variance or conditional use permit. Notices addressed to the last known owner of record as shown on the County Assessor's records shall be deemed proper notice to the owner of such property; and,
2. By publication of a legal notice in a newspaper of general circulation in the County at least ten (10) days prior to the open record hearing date.

AGENCY COMMENTS:

1. The application documents were distributed to the following reviewing agencies on June 11, 2024:
 - a. Benton County Public Works Department
 - b. Benton-Franklin Health District
 - c. Benton County Fire District #4
 - d. Benton County Building Division
 - e. Benton County Fire Marshal
 - f. Benton REA
 - g. Columbia Irrigation District
 - h. City of Richland
 - i. City of West Richland
2. The following comments were received from the **City of West Richland (HEM 1.8)**:
 - a. The 33' right of way reservations contained in the federal land patents are public (not private as stated in applicant's variance application).
 - b. Please note that Benton County has not formally adopted the City of West Richland's Section 8 Local Roadway Plan that was originally developed in 1993 for orderly development of Section 8. Recommend that Benton County formally adopt this roadway plan, or one developed by Benton County consistent with West Richland's plan.
 - c. Also, Benton County has not formally accepted the 33' right of way reservations contained in the federal land patents for lots in Section 8 outside the City Limits that numerous county residents rely on for access and utility services. We recommend that Benton County go through a public process to formally accept portions of the right of reservations for which there is an identifiable public use.

West Richland staff have previously met with Benton County representatives on the acceptance process and are happy to revisit this with them again if desired.

- d. For more information, please contact the City of West Richlands Community and Economic Development Department at (509) 967-3431.

3. The **Benton County Planning Division** has the following comments:

- a. The properties created by the Willamette Heights Plat (HEM (1.10) and identified within "Exhibit A – Carr Setback Variance" HEM (1.5) Criteria For Approval #5 as those with nonconforming setbacks are addressed as follows:
 - i. Willamette Heights #8 combined Lots 159 and 164 (3223 E Mt. Adams View Dr.): No easement is located on the west property line of Lot 164.
 - ii. Willamette Heights #8 Lot 166 (3411 E Mt. Adams View Dr.): The County does not have record of a building permit for the nonconforming structure.
 - iii. Willamette Heights #8 Lot 190 (3341 E Mt. Adams View Dr.): The County does not have record of a building permit for the nonconforming structure.
 - iv. Willamette Heights #8 Lot 191 (3331 E Mt. Adams View Dr.): No easement is located on the west property line.
 - v. Willamette Heights #8 Lot 198 (3400 N Tennessee Walker Ave.): No easement is located on the north property line.
 - vi. Willamette Heights #8 Lot 73 (2060 S 38th Ave.): The nonconforming structure was constructed prior to the establishment of the Benton County Building Division records.
- b. The Benton County Planning Division recognizes private access easements as lands that provide legal access to one or more lots but have not been formally dedicated or developed as county or city road right-of-way. Both private access easements and public road rights-of-way have setback requirements of 25 feet per Benton County Code.
- c. The application materials submitted for this proposal indicate differing sizes of setback reduction being requested. The information within this staff memo is based on the application page and not the submitted site plan.
- d. After review this office has determined that the subject parcel has no special circumstances regarding lot size, slope, topography, or existing infrastructure that would prevent the proposed structure from being constructed in a location that complies with Benton County setback requirements.

FINDINGS OF FACT AND CONDITIONS OF APPROVAL:

The following Findings of Fact and Conditions of Approval are based on comments received up to the date of this staff memo. Any comments received after the completion of this staff memo or submitted during the advertised public hearing for VAR 2024-003 will need to be considered by the Hearings Examiner and may be added to the suggested Findings of Fact and Conditions of Approval as set forth below. The Hearings Examiner may decide to adopt these as their own or amend/add to these Findings of Fact and Conditions of Approval after holding the open public hearing.

The Hearings Examiner 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 BCC 11.50.030 (d)(1).

Based on the information received to date, Planning staff is not providing a recommendation. Should this proposal be approved by the Hearings Examiner the following are suggested findings of fact and conditions of approval:

SUGGESTED FINDINGS OF FACT

1. The applicant is Shane O'Neill with Clover Planning, 6904 Rogue Drive, Pasco, WA 99301.
2. The owners are Jonathan and Teri Carr, 3340 E. Mt. Adams View Drive, West Richland, WA 99353.
3. The applicants are proposing to construct a 3,750 square foot accessory building (detached garage) located at 3340 E. Mt. Adams View Drive, West Richland, WA 99353.
4. A thirty-three (33) foot wide access easement is located on all sides of the subject parcel.
5. Per BCC 11.11.090 each accessory building 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.
6. The accessory building is proposed to be five (5) feet away from the thirty-three (33) foot access easement and thirty-eight (38) feet from the south and east property lines.
7. In order to construct the accessory building in the proposed location, the applicant is requesting a variance to encroach twenty (20) feet into the required twenty-five (25) foot setback from an access easement or public road.
8. A variance shall be granted only if the Hearings Examiner concludes, based on the findings and conditions imposed, that:
 - (i) granting of the proposed variance will not permit a use that is not classified as an allowable, accessory 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 property in the

- surrounding area;
 - (vi) the variance would not be materially detrimental to the 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.
9. The Hearings Examiner 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 BCC 11.50.030(d)(1).

SUGGESTED CONDITIONS OF APPROVAL:

1. The applicant shall provide an accurate site plan and all activities on the site shall comply with the submitted site plan and materials submitted for this application.
2. The approval grants the applicant the ability to deviate from the property development setback standard in BCC 11.11.090 (a)(1) as follows:

The accessory structure may be sited no greater than twenty (20) feet into the twenty-five (25) foot setback from the thirty-three (33) foot wide access easement located on the south and east property lines. The twenty (20) foot encroachment would result in a total setback of thirty-eight (38) feet, from the south and east property lines. The encroachment of the building has been specified on the submitted site plan.

3. The applicant is required to obtain and maintain a Benton County Building Permit for the accessory structure.

TIME TO COMPLETE CONDITIONS OF APPROVAL:

The applicant shall have one (1) year to meet all of the Conditions of Approval.

If all conditions of approval have not been met and the Planning Division does not issue the Variance within one (1) year from the time the Hearings Examiner has conditionally approved the Variance, the Hearings Examiner may declare its approval null and void at a regular Hearings Examiner 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 Hearings Examiner meeting.

CUP 2024-012 - VICINITY MAP

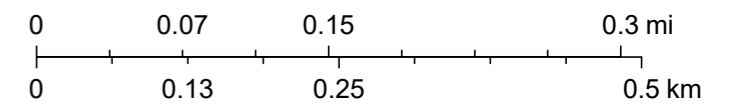
HEM 1.2



6/10/2024, 4:04:19 PM

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- Access Easement
- Private County Road
- City Road
- Road Centerline
- State Route
- Parcels
- Paved County Road



Geophex Surveys Ltd., Maxar

Community Development Department
Prosser Office: 620 Market Street, 1st Floor
Kennewick Office: 102206 East Wiser Parkway
www.co.benton.wa.us



Planning Division
(509) 786-5612
P.O. Box 910, Prosser, WA 99350
planning.department@co.benton.wa.us

VARIANCE APPLICATION

File No. VAV 2024-003

RECEIVED

JUN 07 2024

Benton County
Planning Division

APPLICANT INFORMATION

Please check the box indicating primary contact person for this application

Applicant/Agent:

Shane O'Neill (applicant)

Mailing Address: 6904 Rogue Drive City: Pasco

State: WA ZIP: 99301 Phone: 509-713-4560 Work: 509-713-4560

Email Address: cloverplanning@protonmail.com

Signature: Shane O'Neill Date: 6/3/2024

Digitally signed by Shane O'Neill
Date: 2024.06.03 12:11:33 -0700

Property Owner(s) (if different): Jonathan & Teri Carr

Mailing Address: 3340 E. Mt. Adams View Drive City: West Richland

State: WA ZIP: 99353 Phone: 509-947-8065 Work: _____

Email Address: jr@carsonag.com

Signature: [Signature] Date: 6-5-24

Signature: [Signature] Date: 06-05-24

**If there are additional owners please copy this section, sign, and attach to the application*

Land Surveyor: Aaron Dyck, Stratton Surveying

Mailing Address: 313 N Morain St City: Kennewick

State: WA ZIP: 99336 Phone: 509-735-7364 Work: 509-735-7364

Email Address: Aaron@StrattonSurvey.com

If the property is owned by a corporation, trust, partnership or LLC please complete the entity signature block below showing that the person signing has the authority to sign on behalf of the company.

ENTITY SIGNATURE BLOCK

If the applicant or legal owner of the property is a corporation, partnership, trust or LLC use the following signature block.

Applicant/Legal Owner: _____

Officer name: _____

Title: _____

Signature: _____ Date: _____

THE ABOVE SIGNED OFFICER OF _____ (name of entity)

WARRANTS AND REPRESENTS THAT ALL NECESSARY LEGAL AND CORPORATE ACTIONS HAVE BEEN DULY UNDERTAKEN TO

PERMIT _____ (name of applicant) TO SUBMIT THIS APPLICATION AND THAT THE

ABOVE SIGNED OFFICER HAS BEEN DULY AUTHORIZED AND INSTRUCTED TO EXECUTE THIS APPLICATION.

Any information submitted to the Benton County Planning Division is subject to public records disclosure law for the State of Washington (RCW Chapter 42.17) and all other applicable law that may require the release of the documents to the public.

PARCEL INFORMATION

1. **Subject property address:** 3340 E. Mt. Adams View Drive

City: West Richland **State:** WA **ZIP:** 99353

2. **Parcel number:** 1 - 0 8 9 8 - 4 0 2 - 0 1 8 9 - 0 0 0 **Acres:** 2.5

3. **Access:** County Road State Road/Highway Private Road

4. **Utilities: Power:** Benton PUD Benton REA

Sewer: Septic Tank City Sewer: (Provider) _____

Water: Individual Wells One well serving 2-4 lots One well serving 5+ lots

Private System (Provider & Address) _____

City System (Provider) _____

Gas: No Yes: (Provider) _____

Cable: No Yes: (Provider) _____

Phone: No Yes: (Provider) _____

Irrigation: No Private District: (Provider) Columbia Irrigation District (C.I.D.)

5. **Requested setback variance:** 5 ft. from which boundary line? Front Rear Side
as measured from 33' easement lines

6. **Describe the requested variance:** BCC 11.11.090(a)(1) imposes a 25' setback from private access

easements. This request is for a 20-foot setback reduction from the south and east public easement lines. We request a five (5) foot setback from the south and east easement boundaries. See attached application narrative for more detail

7. **Does the variance being requested border an easement?** Yes No Unknown

8. **Has approval been obtained from the Benton-Franklin Health District?** Yes No N/A

9. **Are there circumstances (lot size/shape, topography, structure size) that prevent compliance with required setbacks?** Yes No

a. *If yes, describe the circumstances which exist on your property that justify deviation from*

the required setbacks: The presence of platted public access easements along all parcel boundaries

is an unusual circumstance. Setback requirements from easements compound the peculiarity of the constraint

b. *Are the circumstances above a result from actions of past/present property owner?*

Yes No *If yes, please explain:* The public access easements were established by the United

States of America sometime around 1938 (see attached Patent no. 1179022).

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10. Are the circumstances creating the need for a variance/deviation unique to your property not experienced by other properties in the area?

The presence, location and width of public access easements on properties in the same vicinity have not been varified.

The limited space available between the easements and the existing septic system, is specific to this site.

11. Do you believe a variance is your only option to solve the problem or is there another reasonable way to accomplish your project that would not require a variance? The setback

reduction is the minimum necessary to acheive the construction goals. No practical alternative locations exist on-site

where the construction could occur due to 58-foot minimum effective setback code requirement.

12. Describe how granting this variance will not be materially detrimental to the public health, safety, welfare, surrounding properties or improvements in the vicinity: The subject vicinity is

in the RL-5 zone where lots less than 5-acres are not permitted. The proposal would result in structures no less than

30 feet from property lines. This ample setback combined with large lots ameliorates all potential impacts to the public.

13. Additional comments or information: Please refer to the variance narrative attached hereto for additional

background information and supporting statements.

(FOR STAFF USE ONLY)

Access: Y N

Application Complete: Y N

Critical Areas: N Y: _____

Zoning: _____

Reviewed by: _____

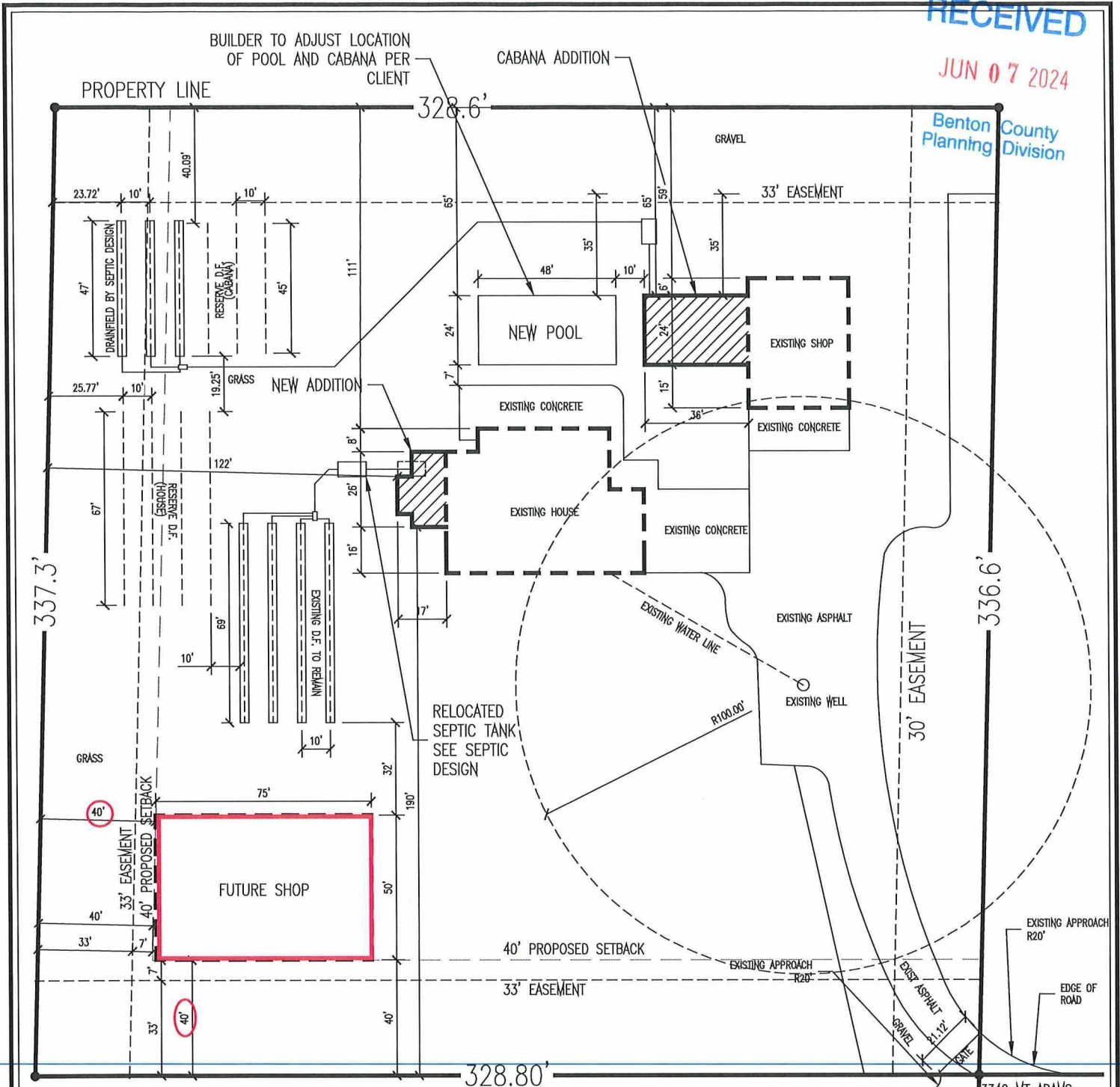
Date: _____

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Benton County Planning Division



Site Plan

SCALE: 1" = 50'

File: Carr-Addition-Site Plan-2.dwg A4 - 8 1/2" X 11 PAPER

LEGAL DESCRIPTION:

SECTION 8 OF WILLAMETTE HEIGHTS
(UNRKDED) LOT 189. WEST RICHLAND, WA.

TAX PARCEL #: 108984020189000

JR CARR

DRAWN BY ZACK McLEOD 6/9/24

LEGEND:

- W=WATER
- I=IRRIGATION
- S=SEWER
- P=POWER

June 5, 2024



To: Benton County Hearing Examiner & Planning Dept. Staff

From: Shane O’Neill, Permit/Land Use Specialist, LCR Construction LLC
shane@lcr-construction.com, (509)410-5889

RE: RL-5 Setback Reduction Variance Request for 3340 E. Mt. Adams View Drive, Richland

Site Information

Benton County Parcel #: 108984020189000
Situs: 3340 E. Mt. Adams View Drive, Richland
Parcel Size: 2.5-acres
Parcel Shape: Square
Zoning: RL-5
Legal Description. Willamette Heights Section 8, Lot 189

Introduction

The owner of 3340 E. Mt. Adams View Drive, Jonathan Carr, desires to construct a detached garage in the southeast quarter of his parcel. Finding adequate space to locate the garage has been challenging due to the presence of 33-foot public platted access/utility easements along all property lines, from which 25-foot setbacks are measured [BCC 11.11.090(a)(1)]. The combination of the easements and setbacks causes an effective minimum setback equaling fifty-eight (58) feet as measured from all property lines. The existing septic drain field adds to the locational constraint on this lot.

A setback variance allowing a twenty (20) foot setback reduction is the minimum necessary to accommodate the property owner’s residential construction goals of having an enclosed utility space. Inversely stated, this is a request for a five (5) foot setback measured from the south and east easement lines, which are both assumed to be thirty-three (33) feet in width by the Planning Department. The result of approval will be a detached residential garage located no less than thirty-eight (38) feet from property lines. When compared to the development pattern of other RL-5 lands in Benton County, building 38-feet from property lines is very reasonable.

This variance request comes after a sincere effort to accomplish the owner’s goals by adding on to the west wall of the existing vehicle garage. That plan was abandoned due to the same easements and setbacks. Alternately, the owner decided to apply for a permit to build a separate detached shop/garage in an alternate location, which can only happen through partial relief from the setback requirement of [BCC 11.11.090(a)(1)].

CRITERIA FOR APPROVAL

A variance shall be granted only if it can be concluded that, as conditioned, that:

1. Granting of the proposed variation will not permit a use that is not classified as an allowable, accessory or conditional use in the zoning district wherein the use would be located;

The setback reduction request applies to a detached residential garage. This type of accessory building and its use is commonly appurtenant to single family dwelling, especially in the surrounding vicinity [11.11.040(a)BCC]. This criterion is satisfied.

2. Special circumstances such as lot size, slope, topography or necessary size or shape of the building prevent compliance with the applicable property development standards;

This application seeks partial relief from zoning code provisions of 11.11.090(a)(1) which adds 25-foot setbacks on to private access easements. In this case, the subject easements are public access and utility easements. Standards for private easements may not apply to public easements. Having lots encumbered by what are presumed to be thirty-three-foot easements on all sides is a peculiar circumstance. Having the equivalent of front yard setbacks applied to all property lines is a unique circumstance resulting in undue spatial constraints. Siad constraint prevents what is common practice on most 2.5-acre rural residential lots. Having been established by the United States of America in 1938 through Congressional action, the subject easements are similarly immovable and restricting as would be any hillside or rock formation.

3. 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;

This application seeks partial relief from zoning code provisions of 11.11.090(a)(1) which adds 25-foot setbacks on to private access easements. Having lots encumbered by thirty three-foot easements on all sides is a peculiar circumstance. Having the equivalent of front yard setbacks applied to all property lines is a unique circumstance resulting in undue spatial constraints. Siad constraint prevents what is common practice on most 2.5-acre rural residential lots.

Across the spectrum of RL-5 lots in Benton County, it is uncommon for setback requirements to be magnified to this extent by easements. In this case 2.5-acre lots contain 36,366 square feet of encumbrance by easement. This means 33% of the lot is encumbered at baseline.

It is noteworthy that the Planning Office is applying private access standards to public access and utility easements in this case. This method of administration appears to be erroneous but is not the primary subject of this variance request.

4. 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;

If the 33-foot public access and utility easements do in fact exist on all sides, these legal features would exist regardless of the owner's identity. The physical feature in this case is legal in nature. This legal feature exhibits similar constraint on development as would a rock cliff, for example.

5. The problem sought to be addressed is not common for other property in the surrounding area;

To what extent this circumstance affects other properties in the vicinity has not been fully evaluated by the applicant. It does seem the Planning Office applies private access standards to public access and utility easements, equally withing the plats of Willamette Heights, Sections 6 & 8, totaling 500 lots.

Current aerial imagery shows eight parcels in the immediately surrounding vicinity which contain structures (homes and accessory structures) placed between 30 and 0 feet from property lines.

Exhibit A – Carr Setback Variance

Site addresses containing these non-conforming structures are:

- 3341 E. Mt. Adams View Drive
- 3331 E. Mt. Adams View Drive
- 3223 E. Mt. Adams View Drive
- 3411 E. Mt. Adams View Drive
- 3400 N. Tennessee Walker Road
- 2060 S. 38th Avenue

Partial results of public records requests for the non-conforming structures on the sites listed above are provided as Exhibit B, included herewith. These approved site plans show structures on nearby properties closer than 33 feet from property lines. It appears the existence of the 33-foot access/utility easements on neighboring properties were ignored or not enforced. These structures have not resulted in complaints from nearby property owners. This serves as evidence that approval of this request is consistent with the existing development pattern in the vicinity, and that residential accessory structures and their use do not diminish the rights and enjoyment of nearby property owners.

6. The variation would not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity under the same zoning classification;

The subject vicinity is in the RL-5 zone where lots less than 5-acres are not permitted. The proposal would result in structures no less than 38 feet from property lines. This ample setback combined with large lot sizes ameliorates all potential impacts to the public resulting in the presence of residential accessory garages/shops. Impacts caused by the presence of residential accessory garages/shops have not been identified and should not be presumed to exist.

7. The variation will not adversely affect the health or safety of persons residing or working in the neighborhood in which the variation is being requested; and,

When used as the zoning intends, residential accessory buildings do not pose risks to the health and/or safety of anyone in the public or the private. Residential accessory buildings located approximately thirty (30) feet from property lines pose no specific adverse health risks to anyone including the adjacent neighbors. Most jurisdictions allow residential accessory structures to be much less than thirty feet from property lines without injurious results.

The applicant understands the 30-foot dimension used above is the result of an easement which is not the subject of this variance request. But the result of this variance approval will be structures no less than thirty-eight (38) feet from property lines. This is an ample buffer which will ameliorate any potential impacts on the adjacent neighbor. If approved, this application will result in a seventy-one (71) foot minimum separation between buildings on this and adjacent parcels (38' on subject parcel + 33' easements on neighboring parcels). The forementioned numbers assume neighboring properties may benefit from setback reductions; only 33' easements are accounted for when in fact structures will likely be separated by 96 feet if this reduction is approved and if neighbors build according to the 25' setback requirement.

8. The variance would not deny the preservation and enjoyment of substantial property rights of those owning property in the vicinity.

If granted, the setback reduction poses no risk to the property rights or the enjoyment thereof, for any property owners in the vicinity. The result of approval will be a residential garage no less than 38-feet from property lines. This ample setback mitigates all potential impacts on adjoining parcels and beyond. The effective garage setback being requested will be magnified by the 33-foot access and utility easement on the opposite side of adjacent property lines. Absent any zoning setback, the base case is a minimum sixty-six (66) foot separation between structures. This ample separation ensures the neighbors continued enjoyment of their property rights. Access to other properties will not be restricted if this variance is granted.

Community Development Department

Prosser Office: 620 Market Street, 1st Floor
Kennewick Office: 102206 East Wiser Parkway
www.bentoncountywa.gov



Planning Division

(509) 786-5612
Planning.department@co.benton.wa.us
102206 East Wiser Parkway, Kennewick, WA 99338

June 11, 2024

Shane O'Neill
6904 Rogue Drive
Pasco, WA 99301

RE: Written Determination of Completeness
File Number: VAR 2024-003

Dear Mr. O'Neill,

This office is in receipt of your project permit application for a variance to encroach 20' into the 25' setback from a private access easement to allow for the construction of a shop. We have determined that the required materials have been submitted and the application is complete. A file number has been assigned (VAR 2024-003) and the review process will now begin.

Although this office has determined that your application is complete, more clarification or information may be needed from you as we go through the review process. Additional information and/or permits may be required from other agencies including, but not limited to, the Benton County Building Division, the Benton-Franklin Health District, and the Washington State Department of Health.

If you have any questions regarding this matter, do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink that reads "Andrea Watts".

Andrea Watts- Senior Planner
Benton County Community Development Dept
Planning Division

Community Development Department
Prosser Office: 620 Market Street, 1st Floor
Kennewick Office: 102206 East Wiser Parkway
www.bentoncountywa.gov



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102206 East Wiser Parkway, Kennewick, WA 99338

June 11, 2024

Benton County Public Works Department
Benton-Franklin Health District
Benton County Fire District #4
Benton County Building Division
Benton County Fire Marshal
Benton REA
City of Richland
City of West Richland
Columbia Irrigation

RE: Variance Request
File #: VAR 2024-003
Parcel #: 1-0898-402-0189-000
Applicant: Clover Planning for Jonathan and Teri Carr

The applicant is proposing to construct a detached shop their existing residence within the Rural Lands 5 Acre District (RL5) and is requesting a variance to reduce the 25-foot setback from a private access easement by 20 feet on the southern and eastern property lines.

Attached please find the application materials submitted for your review.

Please submit your comments to planning.department@co.benton.wa.us by **June 25, 2024**. Please reference file number **VAR 2024-003** in all correspondence.

Thank you.

Benton County Planning Division

Nikki Relyea

From: Eric Mendenhall <emendenhall@westrichland.org>
Sent: Thursday, June 13, 2024 10:21 AM
To: Planning Department
Cc: Michelle Mercer
Subject: [EXTERNAL] RE: Agency Review VAR 2024-003
Attachments: Ordinance 24-20.pdf

Nikki,

Thank you for the opportunity to comment on this application.

The 33' right of way reservations contained in the federal land patents are public (not private as stated in applicant's variance application).

Please note that Benton County has not formally adopted the City of West Richland's Section 8 Local Roadway Plan that was originally developed in 1993 for orderly development of Section 8. Recommend that Benton County formally adopt this roadway plan, or one developed by Benton County consistent with West Richland's plan.

Also, Benton County has not formally accepted the 33' right of way reservations contained in the federal land patents for lots in Section 8 outside the City Limits that numerous county residents rely on for access and utility services. We recommend that Benton County go through a public process to formally accept portions of the right of reservations for which there is an identifiable public use. West Richland staff have previously met with Benton County representatives on the acceptance process and are happy to revisit this with them again if desired.

Best regards,

Eric Mendenhall

Community and Economic Development Director

From: Planning Department <Planning.Department@co.benton.wa.us>
Sent: Tuesday, June 11, 2024 1:56 PM
To: Cristina Woods <Cristina.Woods@co.benton.wa.us>; Benton Franklin Health District - JoDee Peyton <Jodeer@bfhd.wa.gov>; erin.hockaday@bfhd.wa.gov; Jack Howard <jack.howard@bfhd.wa.gov>; Fire District #4 - Chief Paul Carlyle (pcarlyle@bcfd4.org) <pcarlyle@bcfd4.org>; Brad O'Brien <Brad.Obrien@co.benton.wa.us>; Troy Taylor <Troy.Taylor@co.benton.wa.us>; Benton REA - Chris Cooke <CCooke@bentonrea.org>; Benton REA - Derek Miller <dmliller@bentonrea.org>; Gary Tiplady <Gary.Tiplady@co.benton.wa.us>; planning@ci.richland.wa.us; Eric Mendenhall <emendenhall@westrichland.org>; Columbia Irrigation District <CID@columbiairrigation.com>
Subject: Agency Review VAR 2024-003

Good afternoon,

Attached you will find the necessary application materials for a variance to reduce the 25-foot setback from a private access easement by 20 feet on the southern and eastern property lines.

**CITY OF WEST RICHLAND
ORDINANCE NO. 24-20**

**AN ORDINANCE OF THE CITY OF WEST RICHLAND, WASHINGTON,
RELATING TO RIGHTS OF WAY; PROVIDING FOR THE AMENDMENT OF
LOCAL ROADWAY PLAN FOR SECTION 8 OF WILLAMETTE HEIGHTS**

WHEREAS, the City of West Richland, Washington, ("City") was incorporated on June 17, 1955. At or about the time of incorporation the City encompassed lands identified as Section 8, Township 9 North, Range 28 East, Willamette Meridian, or has subsequently annexed said lands after the date of incorporation, which lands are commonly referred to as "Willamette Heights" and referred to hereinafter as "Section 8"; and

WHEREAS, many if not all of the lots contained in said Section 8 were acquired by their present owners, or the predecessors in interest of the present owners, by patents issued by the United States of America. These patents were authorized by several Acts of Congress, including as approved on June 1, 1938, (52 Stat. 609) which is commonly referred to as the "Small Tract Act"; and

WHEREAS, the City identified and adopted local roadway plan for Section 8 as early as 1993, which plan has subsequently been amended in 1999, December 2006, July 2011, August 2012, January 2013, January 2018, April 2018 and most recently on July 17, 2018; and

WHEREAS, the roadway plans for Section 8 identify existing or appropriate locations for a logical unified road system that utilizes previously established travel routes, respects topography, and prevents unnecessary roads from being created; and

WHEREAS, the City Council has determined that it is in the best interests of the City to hereby ratify and reassert the commitment of the City to the current roadway plan for Section 8; and

WHEREAS, the City proposed amendment of the Local Roadway Plan for Section 8 as an action of the City pursuant to the State Environmental Policy Act, Ch. 43.21C RCW ("SEPA"). The City's Public Works Department prepared SEPA checklist for said action dated May 20, 2020. After reviewing the SEPA checklist, the City's Community Development Department issued a determination of nonsignificance dated May 21, 2020, which also gave public notice of a 15-day comment period. The comment period closed on June 4, 2020. No comments were received that expressed opposition to the City's proposed action; and

WHEREAS, the City Council on June 16, 2020 adopted Resolution 26-20 establishing a Public Hearing date of July 21, 2020 for the proposed amendment to the Section 8 Local Roadway Plan; and

WHEREAS, the City Council conducted a public hearing to consider the actions set forth herein on July 21, 2020, at which public comment was accepted; and

WHEREAS, the City Council has determined that the actions set forth herein are consistent with the goals and policies of the City's comprehensive plan; and

WHEREAS, the City Council has determined that the actions set forth herein are in the best interests of the public health, safety, and welfare;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON, do hereby ordain as follows:

SECTION 1: Adoption of proposed amendment to the Section 8 Local Roadway Plan: The Local Roadway Plan for Section 8, set forth in the attached Exhibit A, which is hereby incorporated by this reference as if fully set forth herein, is hereby approved and adopted.

SECTION 2: Severability: If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

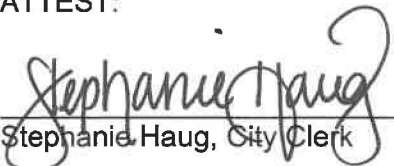
SECTION 3: Effective date: This ordinance shall take effect and be in force five (5) days after its passage and publication as required by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON, at a regular meeting thereof this 21st day of July, 2020.




Brent Gerry, Mayor

ATTEST:



Stephanie Haug, City Clerk

APPROVED AS TO FORM:



Bronson Brown, City Attorney

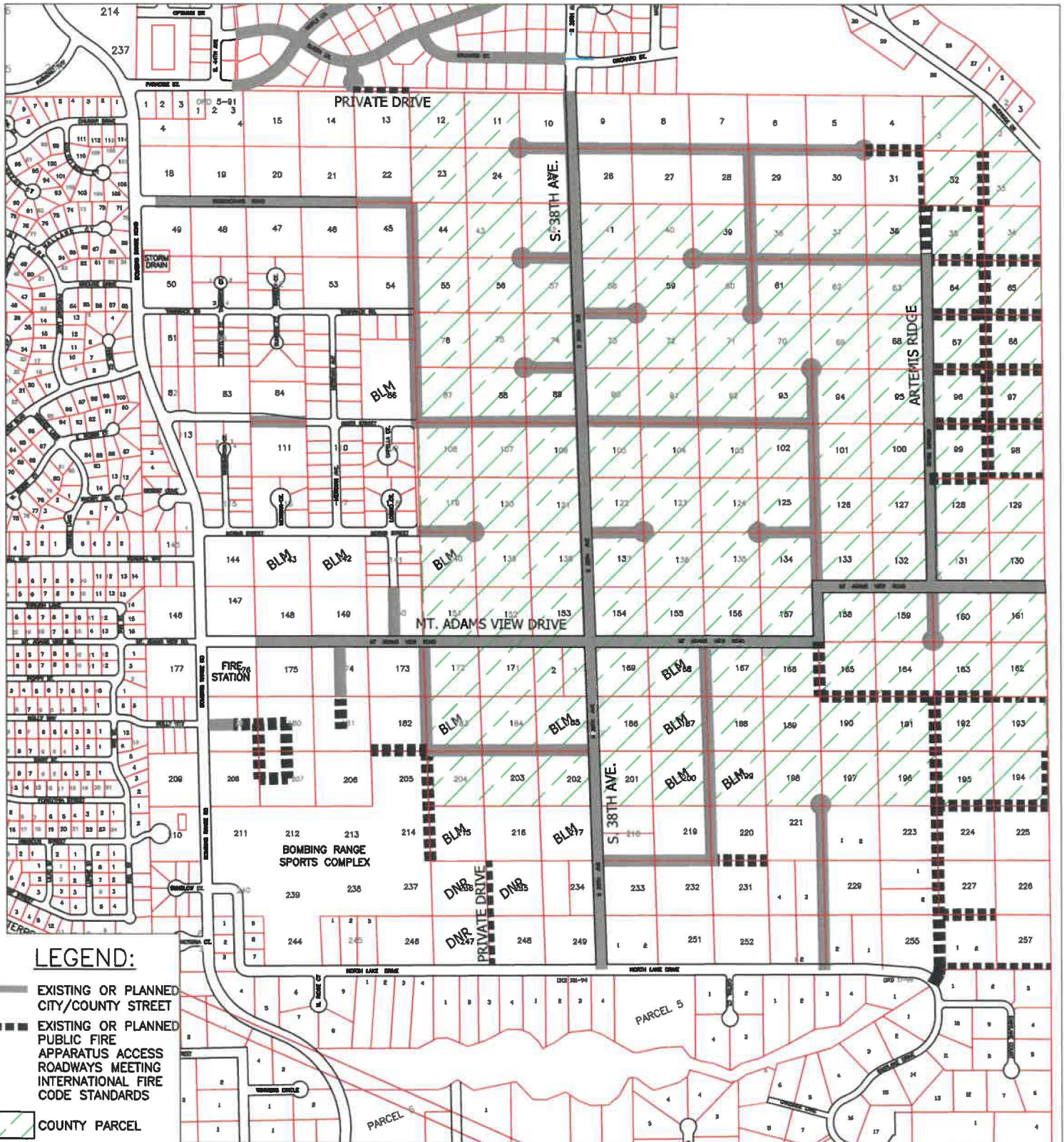
CITY OF WEST RICHLAND



SECTION 8 LOCAL ROADWAY PLAN



ORDINANCE 24-20 ADOPTED JULY 21, 2020





HEM 1.9

Fire Marshal Comments:

Date: June 18, 2024

Parcel #: 108984020189000

Nikki,

From the perspective of the Fire Marshal, I have no comment or objection regarding VAR 2024-003

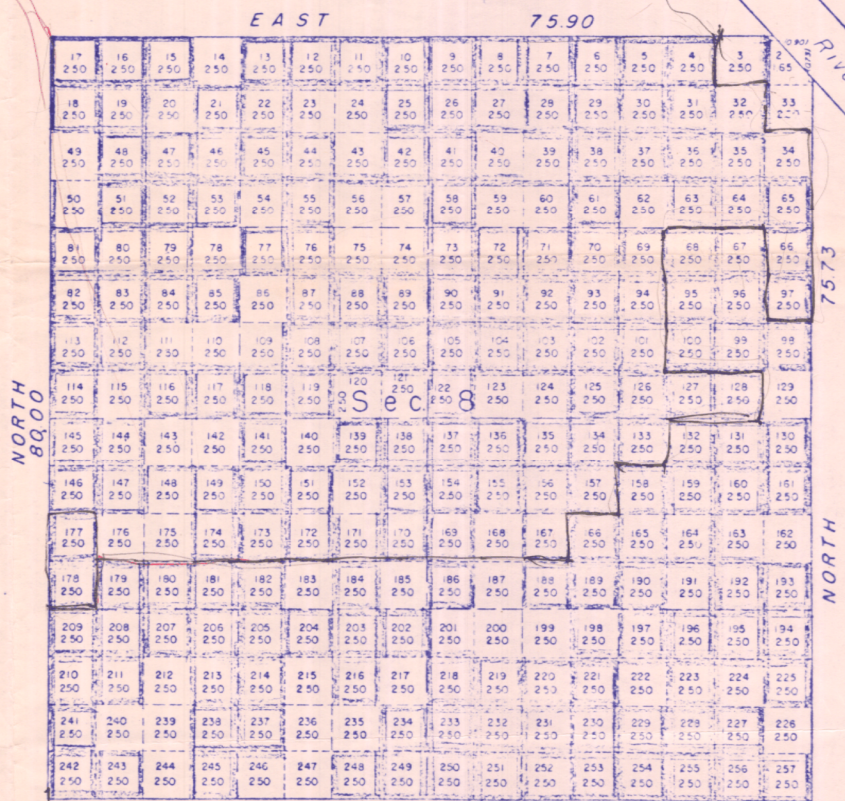
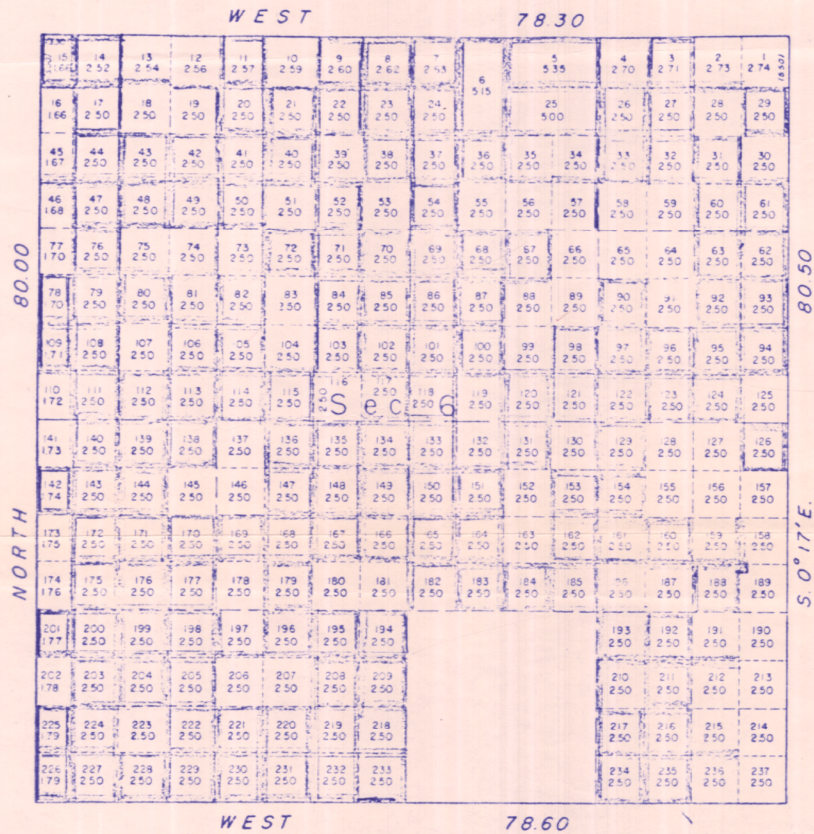
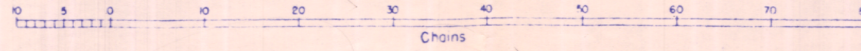
If you have questions on these requirements, please, feel free to contact the County Fire Marshal at (509) 735-3500. Ext 2411.

Re: VAR 2024-003, Carr

**Gary Tiplady
Benton County Fire Marshal
Building Inspector II
509-735-3500
Gary.Tiplady@co.benton.wa.us**

TOWNSHIP 9 NORTH, RANGE 28 EAST, OF THE WILLAMETTE MERIDIAN, WASHINGTON. SUPPLEMENTAL PLAT

HEM 1.10



city Annexation

Yokimo River

Portman lots 6

All 7

This plat of sections 6 and 8, T. 9 N., R. 28 E., Willamette Meridian, Washington, showing the subdivision of Section 6 into Lots 1 to 237 and Section 8 into Lots 2 to 257, is based upon the plat approved March 31, 1865.

79.80 N. 89° 47' W UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT Washington, D. C. September 8, 1954

This plat showing amended lettings, having been correctly prepared in accordance with the regulations, is hereby accepted.

For the Director

Earl J. Harrington Industrial Engineering Officer



1954

Nikki Relyea

From: cerda8 <cerda8@netzero.net>
Sent: Wednesday, July 10, 2024 10:34 AM
To: Planning Department
Subject: [EXTERNAL] Variance permit - VAR 2024-003

This letter serves as a formal complaint and thus is to serve as contest of the purposed shop built plan by applicant Jonathan and Teri Carr for property located at 3340 E Mt Adam's View Dr West Richland WA 98353 Parcel 1-0898-402-0189-000

We, Michelle and Oscar Cerda, are the property that is adjoining where this proposed build is to take place. We purchased our property, 3400 Tennessee Walker Ave 3 + years ago because of the peaceful quiet this area had. We also took ownership here because of the "established" properties surrounding our property. The views are unobstructed as of now. And noise is very minimal.

With the addition of the purposed shop in proposed location set by builder, our current views from our large viewing bay windows would then provide view of a shop. The property at the proposed build site is fully developed and we never would have considered someone move onto the property and destroy not only IT'S beautiful scenery but the scenery of its neighbors. If the shop is built, our views from our property of sunrise and large established tree (which I'm fearful will be cut down) would be completely lost.

It's also fearful of the possibility of excessive noise that would be produced by use of the shop so close to our property or use of another owner down the line in the future.

Please take our contestment of the proposed shop build into consideration. This lot is massive and has quite a large shop already on its property. There are also other areas on the purposed property where NO neighbors views would be obstructed by a shop built.

Sincerely,
Michelle & Oscar Cerda
Cerda8@netzero.net
3400 Tennessee Walker Ave West Richland WA 99353
509 438 2472
509 430 8006

Sent from my Verizon, Samsung Galaxy smartphone



HEM 1.12

NOTICE OF OPEN RECORD HEARINGS

NOTICE IS HEREBY GIVEN that the following applications have been proposed to the Benton County Hearings Examiner for Benton County, Washington.

NOTICE IS FURTHER GIVEN that the Benton County Hearings Examiner will hold an open record public hearing for each of the below stated applications on **July 19, 2024** at 10 a.m. in the Planning Hearing Room, First Floor Courthouse, 620 Market Street, Prosser, WA 99350. The hearings will be held in-person and virtually/telephonically via Webex. To find information on attendance and testimony options, directions to the meeting room and to review documentation for the application, please visit <https://tinyurl.com/BCpublicnotice>.

CONDITIONAL USE PERMIT – CUP 2024-011 The applicants, Troy and Katie McDaniels, are proposing to construct an 800 sq. ft. accessory dwelling within an existing shop while finishing construction on their 2,800 sq. ft. single family residence. The project is located at 201023 E Game Farm Road, Kennewick, WA 99337. Parcel number 1-2980-101-3728-004.

CONDITIONAL USE PERMIT – CUP 2024-012 The applicant, Antonio Velazquez on behalf of Dylan and Rebecca Wood, is proposing to construct a 700 sq. ft. detached accessory dwelling unit on a parcel with an existing 1,809 sq. ft. single family residence. The project is located at 45307 E Ruppert Road, Benton City, WA 99320. Parcel 1-0297-201-2570-004.

VARIANCE PERMIT – VAR 2024-003 The applicant, Shane O’Neill on behalf of Jonathan and Teri Carr, is requesting a variance to reduce the 25-foot setback requirement from a private access easement by 20 feet on the southern and eastern property lines for the construction of a shop. The project is located at 3340 E Mt. Adams View Drive, West Richland, WA 99353. Parcel 1-0898-402-0189-000.

Anyone may participate in the hearings and present testimony or comments on an application. Persons may appear in person or virtually/telephonically during the hearing or provide written testimony to the Hearings Examiner on or before **July 17, 2024**. Written comments can be emailed to planning.department@co.benton.wa.us, mailed to or dropped off at the Planning Division office at the Public Services Building, 102206 E Wiser Parkway, Kennewick, WA 99338.

Any information submitted to Benton County is subject to the public records disclosure laws for the State of Washington (RCW Chapter 42.17) and all other laws that may require the release of the documents to the public.

If you wish to provide testimony during the hearing (in person or virtually), we ask that you inform the Planning Division before the meeting. You can do that by filling out a Request to Testify form at <https://tinyurl.com/testifyform> or by contacting our office to be added to the list. **You must submit a request for each hearing in which you wish to participate.** We ask that participants who will be attending virtually please limit background noise and/or mute their line to prevent interruptions of the meeting.

If you have questions regarding any of the actions before the Hearings Examiner or the hearing process, please contact the Planning Division at (509) 786-5612, 102206 E. Wiser Parkway, Kennewick, WA 99338, or planning.department@co.benton.wa.us.

Dated this 26th day of June, 2024.

PUBLICATION DATE: July 3, 2024

SUSAN E. DRUMMOND
Benton County Hearings Examiner

MICHELLE L. MERCER, Planning Manager
Community Development Department