



DOUGLAS COUNTY

TRANSPORTATION & LAND SERVICES

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STAFF REPORT BERRY VARIANCE

TO: Douglas County Hearing Examiner
FROM: Douglas County Land Services Staff
RE: Berry Front Yard Setback Variance (V-2019-01)
DATE: October 7, 2019

I. GENERAL INFORMATION

Requested Action Variance for front yard setback reduction. The subject property is approximately 0.3 acres in size and is located at 101 Crest View Drive, Orondo WA 98843. Applicant is requesting a variance from the front yard setback from 25 feet to 10 feet to allow a 10x14 structure (storage shed) to remain in place. The property is located in the Rural Recreation (R-REC) zoning district under Douglas County Code.

Location: The subject property is located at 101 Crest View Drive, Orondo WA 98843, and is further described as being located within Section 15, Township 26N, Range 21E, W.M. The Assessor's Parcel Number is 45600503600.

Background: In January 2019, during a code enforcement investigation of ROW encroachments in the entire Bauer's Landing development, a shed was determined to be located in violation of the code-required front yard setback at 101 Crest View Drive. Code Enforcement Case No. CE-2019-035 was initiated on January 29, 2019, at the direction of the Board of County Commissioners and the Land Services Director. In February through July 2019, the County corresponded with the owner to negotiate a resolution to the violation. The owner insisted upon not relocating the shed. In July 2019, the owner was informed that they may request a variance to the front yard setback through the code-approved variance process. In September 2019, the owner's agent submitted Variance application No. V-2019-01. Enforcement has been held in abeyance during Variance processing.

II. SITE INFORMATION

Site Characteristics: The subject property includes permitted swimming pool (BPR-2018-368) and retaining wall (BPR-04-309 & BP-14124). In addition, the property includes non-permitted park model recreational vehicle, the subject shed, and access.

Uses adjacent to the subject properties:

North: Single family homes.

South: Crest View Drive and single family homes

East: Single family homes

West: Weimer Rd and agriculture

Access: The subject property is accessed from Crest View Drive.

Zoning and Development Standards: The subject property is located within the Rural Recreation (R-REC), which allows for “structures for the storage of personal property, such as private garages and carport structures, equipment buildings or storage sheds, not intended for human habitation as living quarters” (DCC 18.27.020 (F) compliant with Chapter 18.16 General Regulations, including, but not limited to 18.16.080 Yards and setbacks.

The purpose of the general regulations is to provide a concise reference to requirements that are common to many different zoning districts, thereby providing a more efficient utilization of this title.

Applicable provisions of D.C.C., Chapter 18.84 “Variances”

Variances may be granted if it can be demonstrated that all of the following criteria are met:

- A. The strict application of the bulk, dimensional or performance standards set forth in the applicable district or in this title precludes a reasonable permitted use of the property;
- B. The hardship asserted by the applicant is specifically related to the property and is the result of unique conditions such as irregular lot shape or size, topography or natural features over which the applicant has no control;
- C. The hardship asserted by the applicant results from the application of this title to the property and not the result of deed restrictions or the actions of the applicant or owner;
- D. The requested variance will not constitute a grant of special privilege not enjoyed by other properties in the same neighborhood or district, and is the minimum relief necessary for the preservation of a property right substantially the same as possessed by owners of property in the same neighborhood or district; and
- E. The granting of the variance will not be detrimental to the purposes of this title, be injurious to property in the same neighborhood or district in which the property is located, cause substantial adverse impact on the public interest or be otherwise detrimental to the objectives of the comprehensive plan.

III. COMPREHENSIVE PLAN:

The Comprehensive Plan designates this property as Rural Recreation. The purpose of the rural recreation (R-REC) district is to provide the opportunity for the development, redevelopment, and infill of existing intensely developed rural recreational areas for residential, recreation, and tourist-related development consistent with the rural character in the vicinity. These areas provide a distinct rural lifestyle closely associated with the many natural amenities found within Douglas County. These areas are clearly identifiable as existing intensely developed rural recreational developments where a logical boundary can be delineated and as set by the built environment. Such boundary shall not permit or encourage a new pattern of sprawling low density. The predominate parcel size is generally less than one acre in size. Uses may include intensification of existing residential development or new development of residential, small scale

recreational or tourist uses, provided uses rely on a rural location and do not encourage urban type development or services.

The purpose of the general regulation and zoning is to further the goals and policies of the comprehensive plan for the physical development of the county. The objectives of regulations and zoning are to protect the public health, safety and welfare; encourage the orderly growth of the county; promote compatible uses of land; provide desired levels of population density and intensity of land use; facilitate adequate levels of community services and utilities; and to provide workable relationships between land uses, the transportation system, and the environment.

Development regulations include a variety of land use regulations, such as zoning and setbacks. Douglas County has a range of development regulations, regulating how land is subdivided, used, and developed.

IV. ENVIRONMENTAL REVIEW

The granting of a variance is categorically exempt from the thresholds determination pursuant to WAC 197-11-800 (6) (e) "Granting of variance based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density."

VI. AGENCY AND PUBLIC COMMENTS:

Applicable agencies have been given the opportunity to review this proposal. Agency comments have been included as Attachment A.

Public comments have been received and are included as Attachment B.

VII. PROJECT ANALYSIS

In review of this proposal it is important to consider applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements. Identified below is planning staff's analysis and consistency review for the subject application.

Comprehensive plan consistency:

The purpose of the general regulation and zoning is to further the goals and policies of the comprehensive plan for the physical development of the county. The objectives of regulations and zoning are to protect the public health, safety and welfare; encourage the orderly growth of the county; promote compatible uses of land; provide desired levels of population density and intensity of land use; facilitate adequate levels of community services and utilities; and to provide workable relationships between land uses, the transportation system, and the environment.

Encroachment into setbacks is not consistent with the goals and policies of the Comprehensive Plan by virtue of violation of the general regulations.

Consistency with the provisions of Rural Recreation (R-REC) Zoning District, DCC Chapter 18.27:

Rural Recreation (R-REC) allows for “structures for the storage of personal property, such as private garages and carport structures, equipment buildings or storage sheds, not intended for human habitation as living quarters” (DCC 18.27.020 (F) compliant with Chapter 18.16 General Regulations, including, but not limited to 18.16.080 Yards and setbacks.

Consistency with Chapter 18.16.080 “Yards and Setbacks”

No building or structure shall be erected nearer than fifty-five feet from the deeded centerline of any public or private road or highway, nor twenty-five feet from the property line of any public or private road or highway, whichever distance is greater, except as provided below:

- a. On local access roads in residential subdivisions where sidewalks have been installed, the minimum front yard shall be twenty-five feet from the front property line. Corner lots shall be classified as having two required front yard setbacks.
- b. Boundary Roads. No building or structure shall be erected nearer than fifty-five feet from the deeded, monumented or anticipated centerline of a boundary half road right-of-way or twenty-five feet from the property line, whichever is greater, except as provided in subsection (A)(1)(a) of this section.

There are no sidewalks along Weimer Rd nor Crest View Drive. Neither Weimer Rd nor Crest View Drive are Boundary Road. Crest View Drive has 60ft of Right of Way.

A fifty-five feet from the deeded centerline and/or 25 feet from property line setback is applicable.

Consistency with the provisions and requirements of D.C.C. Title 19 ENVIRONMENT (Critical Areas and SEPA),

No Resource Lands/Critical Areas are located within nor the vicinity of the subject property. This includes, but is not limited to Wetlands, Fish and Wildlife Habitat Conservation Areas, Geologically Hazardous Areas (steep slopes), Aquifer Recharge Areas, and /or Floodplains / Floodways.

Consistency with Chapter 18.84.020 “Evaluation Criteria”

Variations are allowed throughout all zoning district classifications. Douglas County does provide a development review process through the Hearing Examiner for relief of development standards where it can be shown that, owing to special and unusual circumstances related to specific property, the literal interpretation or specific application of the title would cause undue or unnecessary hardship. The applicant’s representative has submitted responses to the evaluation criteria.

- A. The strict application of the bulk, dimensional or performance standards set forth in the applicable district or in this title precludes a reasonable permitted use of the property;

There is no lack of a physical building envelope to place a 140 square feet structure. The lot is approximately 13,068 square feet, the permitted structure measures approximately 780 square feet, and the non-permitted Park Model RV occupies approximately 740 square feet (application states 400 square feet). *NOTE: The applicant did not provide a site plan per the Douglas County Site Plan Checklist and Example Site Plan to assist in verifying the calculations. The calculations are derived from the materials submitted within the variance application; and adjusted to provide benefit to the applicant.* The area available for construction is approximately 5,180 square feet (approximately 6,700 square outside of setbacks). The required front yard setback of 25 feet does not limit the building of the accessory structure. Furthermore, sheds are an Accessory Structure, and an accessory structure (shed) cannot be a living space per DCC 18.27.020n (F). An exempt accessory structure, shall be used as storage, and not be used for any form of habitable space or living space habitation.

The strict application of the bulk, dimensional or performance standards set forth in the applicable district or in this title does not preclude a reasonable permitted use of the property.

- B. The hardship asserted by the applicant is specifically related to the property and is the result of unique conditions such as irregular lot shape or size, topography or natural features over which the applicant has no control;

There are no setback conflicts on this lot. There are no Critical Areas on this lot. The lot is rectangular in shape without irregularities that prohibit and/or limit structure placement. The existing topography of the lot was created and controlled by the owner of the lot. The owner of the lot had full control over structure locations. There exists alternative 140 square feet of area locations, over which the owner has full and complete control, on the subject property outside of areas that are within the setbacks and/or areas protected by statute. Any assertion of hardship was created (over which the owner has full and complete control) by the previous owner and assumed by the current owner upon purchase of the subject property.

There is no hardship specific to the subject property which is the result of unique conditions such as irregular lot shape or size, topography or natural features over which the applicant has no control.

- C. The hardship asserted by the applicant results from the application of this title to the property and not the result of deed restrictions or the actions of the applicant or owner;

There are no known deed restrictions. Purchase of land includes the deficits and benefits of the purchase, and does not negate the requirements of compliance and/or enforcement of the law. The shed is in violation as a result of the owner's action. The passage of time cannot "legitimize" a violation. There are no permits, approvals,

authorizations and/or other allowances for the placement of the shed from and/or granted by Douglas County.

There is no hardship resulting from the application of this title to the property. There is no hardship from deed restrictions. There is a hardship created by the actions of the applicant or owner with the placement of the shed within required setbacks.

- D. The requested variance will not constitute a grant of special privilege not enjoyed by other properties in the same neighborhood or district, and is the minimum relief necessary for the preservation of a property right substantially the same as possessed by owners of property in the same neighborhood or district; and

The Douglas County Code has not changed in a manner that would create a non-conformity for the structure. The Bauer's Landing community includes two variances. V-83-12 (V12-83) appears identical in content and substance, and was denied. No front setback variances have been granted for an accessory structure. V-93-07 (V7-93) was for an eave projection setback with a reduction of one foot for a single family residence, appears differing in content and substance, and was granted in a time where eave projections are no longer the standard for structure encroachment.

The requested variance will grant special privileges not enjoyed by other properties by allowing encroachment into a required setback.

- E. The granting of the variance will not be detrimental to the purposes of this title, be injurious to property in the same neighborhood or district in which the property is located, cause substantial adverse impact on the public interest or be otherwise detrimental to the objectives of the comprehensive plan.

The granting of the variance in this circumstance may damage the integrity of the Code and its uniform application throughout Douglas County. The purpose of the general regulation and zoning is to further the goals and policies of the comprehensive plan for the physical development of the county. The objectives of regulations and zoning are to protect the public health, safety and welfare; encourage the orderly growth of the county; promote compatible uses of land; provide desired levels of population density and intensity of land use; facilitate adequate levels of community services and utilities; and to provide workable relationships between land uses, the transportation system, and the environment.

Therefore, granting of the variance will be detrimental to the purposes of this title, be injurious to property in the same neighborhood, and cause substantial adverse impact on the public interest or be otherwise detrimental to the objectives of the comprehensive plan.

Agency comments:

Agency Notified	Response Received	Agency Notified	Response Received
Bonneville Power	N/R	Douglas County	09/10/2019

Administration		Transportation & Storm Water	NA
Chelan-Douglas Health District	N/R	Douglas County Building	N/R
Douglas County PUD	09/12/2019 NA	Douglas County GIS/Addressing	09/10/2019 NA
WA State Dept. of Ecology	N/R	Douglas County Fire Marshal	09/18/2019

* N/R = No Reply

Agency comments have been included as suggested conditions of approval, as applicable.

VIII. RECOMMENDATION

This application will be detrimental to the general public health, safety or welfare and does not meet the basic intent and criteria associated with Title 18 of the Douglas County Code and the Comprehensive Plan. Staff recommends denial of V-2019-01 subject to the following findings of fact:

Suggested Findings of Fact:

1. The applicants and owners are Mark & Bonita M Berry, 14830 16th St Se Snohomish, WA 98290.
2. In January 2019, during a code enforcement investigation of ROW encroachments in the entire Bauer's Landing development, a shed was determined to be located in violation of the code-required front yard setback at 101 Crest View Drive.
3. Code Enforcement Case No. CE-2019-035 was initiated on January 29, 2019, at the direction of the Board of County Commissioners and the Land Services Director.
4. In February through July 2019, the County corresponded with the owner to negotiate a resolution to the violation. The owner insisted upon not relocating the shed.
5. In July 2019, the owner was informed that they may request a variance to the front yard setback through the code-approved variance process.
6. On September 9, 2019, the applicant applied for a variance.
7. General Description: Variance for front yard setback reduction. The subject property is approximately 0.3 acres in size and is located at 101 Crest View Drive, Orondo WA 98843. Applicant is requesting a variance from the front yard setback from 25 feet to 10 feet to allow a 10x14 structure (storage shed) to remain in place. The property is located in the Rural Recreation (R-REC) zoning district under Douglas County Code.
8. Location: The subject property is located at 101 Crest View Drive, Orondo WA 98843, and is further described as being located within Section 15, Township 26N, Range 21E, W.M. The Assessor's Parcel Number is 45600503600.
9. Site Characteristics: The subject property includes permitted swimming pool (BPR-2018-368) and retaining wall (BPR-04-309 & BP-14124). In addition, the

property includes non-permitted park model recreational vehicle, the subject shed, and access.

10. Surrounding Property:

North: Single family homes.

South: Crest View Drive and single family homes

East: Single family homes

West: Weimer Rd and agriculture

11. According to the application materials 10x14 structure (storage shed) is located within the front yard setback.
12. The Comprehensive Plan Designation is Rural Recreation (R-REC).
13. The subject property is located in the Rural Recreation (R-REC).
14. Chapter 18.16 – General Regulations includes “Yards and Setbacks”
15. The purpose of the general regulation and zoning is to further the goals and policies of the comprehensive plan for the physical development of the county. The objectives of regulations and zoning are to protect the public health, safety and welfare; encourage the orderly growth of the county; promote compatible uses of land; provide desired levels of population density and intensity of land use; facilitate adequate levels of community services and utilities; and to provide workable relationships between land uses, the transportation system, and the environment.
16. Development regulations include a variety of land use regulations, such as zoning and setbacks. Douglas County has a range of development regulations, regulating how land is subdivided, used, and developed.
17. Pursuant to DCC 14.92.020 Compliance required, no person, corporation, partnership, association or other legal entity shall fail or refuse to comply with, or interfere with or resist the enforcement of, the provisions of Titles 15, 17, 18, 19 and/or 20 of the DCC and/or any condition of approval imposed by the board of county commissioners, planning commission, director, zoning adjustor or hearing examiner, or a lawful land use order or directive of a county official. Any such act or failure to act shall constitute a violation under this chapter.
18. Chapter 18.84 of the Douglas County Code authorizes the Douglas County Hearing Examiner to grant variances from the requirements of Title 18 and establishes evaluation criteria for the granting of variances.
19. The hardship asserted by the applicant is not the result of unique conditions of the property but the location of the placement of the shed which the applicant has complete control.
20. The applicant has not met the burden of proof to demonstrate that the placement of the shed meets the variance criteria of DCC 18.84.020.
21. Adequate space exists on the subject property to locate a shed outside of the setback.
22. Variances cannot be issued on a matter of preference. Rather, the applicant is charged with the responsibility of showing that any design, other than the one provided, cannot meet the intent of the Douglas County Code without the issuance of a variance.
23. The applicant has failed to illustrate that the shed placement meets the criteria in DCC 18.84.020 for the granting of the variance.
24. Pursuant to DCC 18.84.030, the action on a variance must:
 - a. Protect the interests of surrounding properties and the general public health, safety, welfare and interest;

- b. Accomplish the objectives and intent of this title, other applicable regulations and the comprehensive plan; and
 - c. Mitigate potential adverse impacts of the proposal.
25. Access by foot is acceptable for an accessory structure, and accessory structure (shed) cannot be a living space. An exempt accessory structure, shall be used as storage, and not be used for any form of habitable space or living space habitation. This building is for the sole purpose of storage.
 26. Comments from reviewing agencies have been considered and addressed where appropriate.
 27. The granting of a variance is categorically exempt from the thresholds determination pursuant to WAC 197-11-800 (6) (e).
 28. No Resource Lands/Critical Areas are located within nor the vicinity of the subject property. This includes, but is not limited to Wetlands, Fish and Wildlife Habitat Conservation Areas, Geologically Hazardous Areas (steep slopes), Aquifer Recharge Areas, and /or Floodplains / Floodways.
 29. Surrounding property owners were given the opportunity to comment on the proposals, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
 30. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
 31. The granting of the variance will be detrimental to the purposes of this title, be injurious to property in the same neighborhood or district in which the property is located, cause substantial adverse impact on the public interest or be otherwise detrimental to the objectives of the comprehensive plan.
 32. There is no lack of a physical building envelope to place a 140 square feet accessory structure.
 33. The front yard setback of 25 feet does not limit the building of the accessory structure for the subject property
 34. There are no setback conflicts on the subject property.
 35. The lot is rectangular in shape without irregularities that prohibit and/or limit structure placement.
 36. There are no known deed restrictions within the subject property.
 37. Purchase of land includes the deficits and benefits of the purchase. Purchase of the subject property does not negate the requirements of compliance and/or enforcement of the Douglas County Code. Furthermore, the passage time cannot legitimize a violation of the Douglas County Code.
 38. The Bauer's Landing community includes two variances.
 - a. V-83-12 (V12-83) appears identical in content and substance, and was denied. No front setback variances have been granted for an accessory structure.
 - b. V-93-07 (V07-93) was for an eave projection setback with a reduction of one foot for a single family residence, appears differing in content and substance, and was granted in a time where eave projections are no longer the standard for structure encroachment.
 39. Any Conclusion that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

Suggested Conclusions:

1. The Hearing Examiner has been granted authority to render this decision.

2. The placement of the shed is not consistent with the intent, purposes and regulations of the Douglas County Code and Comprehensive Plan.
3. The placement of the shed does not conform to the standards specified in the Douglas County Code.
4. The use and location of the shed will not comply with all the required performance standards as specified in the Douglas County Code.
5. The placement of the shed is contrary with the Comprehensive Plan, zoning code and other land use regulations.
6. The placement of the shed does not meet the variance criteria of DCC 18.84.020
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

Respectfully Submitted, Nathan Pate, AICP - Principal Planner

Attachments