

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

140 19th Street NW
East Wenatchee, WAS 98802-4109

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
V-2019-01)	DECISION AND
Berry)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on October 17, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. 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 Right of Way 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. From 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: This is an application for a variance for a 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. The 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, the 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, 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, however 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:
 - 24.1 Protect the interests of surrounding properties and the general public health, safety, welfare and interest;
 - 24.2 Accomplish the objectives and intent of this title, other applicable regulations and the comprehensive plan; and
 - 24.3 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 on the property 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. :
 - 38.1 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.
 - 38.2 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. The entire Planning Staff file was admitted into the record at the public hearing.
40. The Douglas County Department of Land Services recommended denial.
41. An open record public hearing after due legal notice was held on October 17, 2019.
42. Appearing on behalf of the applicant was Julie Norton. Ms. Norton was not sworn in as a witness. She is the attorney for the applicant. She indicated that the evidence supports the variance application in that the shed acts as a safety feature so that people don't fall off the retaining wall. She indicated that the shed would not fit anywhere else on the second or third tier of the property. She agreed that a smaller shed might be able to fit on the second tier of the property given the setbacks. She agreed that the bottom tier could have been used for the shed before the swimming pool was built, but it would be difficult to get to. The testimony before the Hearing Examiner was that the applicant put in the pool on the bottom tier. The hardship claim by the Applicant is the tiered property.

43. Also testifying on behalf of the Applicant was Mariah Low. Ms. Low testified that she was the daughter of the property owners. She indicated that they can't move the shed due to the topography of the property. She indicated that the shed was built in 2004 along with the retaining wall. She stated that the County actually issued a permit to construct a second story onto the shed.
44. Testifying on behalf of the County was Hugh Theiler. Mr. Theiler is the code compliance inspector for Douglas County. Mr. Theiler offered into evidence, Exhibit 1, which is an aerial photograph of the property with a removable outline the size of the shed. The purpose of this exhibit was to show that the shed could be moved not only on to the second tier, but also onto the fourth tier and comply with all set back requirements. Mr. Theiler further testified that although a building permit was issued for the expansion of the shed, this permit was later revoked when the setback violation was discovered.
45. The Hearing Examiner finds that there is adequate space on the subject property for which to have located the shed, in its current size, without violating setbacks.
46. Any Conclusion of Law that is more correctly a finding of fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

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.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, Application V-2019-01 is hereby **DENIED**.

Dated this 23rd day of October, 2019.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.