

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application of Garr        )  
Harrel for a Major Variance to the Setback    )  
Requirements of the CCZO for the Rural        )  
Residential (RR-5) Zone                        )        FINAL ORDER NO. 24-2008

WHEREAS, on November 16, 2007, Garr Harrel (hereinafter referred to as the "Applicant"), submitted an Application, V 08-08, for a Major Variance to reduce the sideyard setback requirement for his property in the Rural Residential (RR-5) Zoning District from 30 feet to 15 feet, so as to allow for the construction of an attached garage; and

WHEREAS, the Columbia County Planning Commission held a hearing on the matter at its regularly scheduled January 7, 2008 meeting, and after a split vote of the Planning Commission on a motion to deny the application continued the matter to its regularly scheduled February 4, 2008 meeting, leaving the record open for additional arguments, evidence and testimony; and

WHEREAS, at the continued hearing on February 4, 2008, the Planning Commission accepted new arguments, evidence and testimony, deliberated on the matter and voted to approve the Application; and

WHEREAS, Planning Commission Final Order V 08-08, which is attached hereto as Attachment 1 and is incorporated herein by this reference, was signed on February 8, 2008 and mailed out on February 12, 2008; and

WHEREAS, on February 8, 2008, an appeal was filed with the Columbia County Board of Commissioners of the Planning Commission's V 08-08 decision; and

WHEREAS, on March 18, 2008, the Board of County Commissioners held a de novo hearing on the Application, heard testimony and received evidence into the record, and deliberated on the Application; and

WHEREAS, after deliberations the Board of County Commissioners voted to tentatively approve Application V 08-08 with the Conditions of Approval imposed by the Planning Commission's Final Order 08-08 and to deny the appeal of the Planning Commission's decision;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Board of County Commissioners adopts the Findings of Fact and Conclusions of Law in the Staff Report to the Board of County Commissioners dated March 12, 2008, which is attached hereto as Attachment 2 and is incorporated herein by this reference.

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2. In the event of any conflict between this Final Order and the Staff Reports attached hereto (Attachement 2), this Order shall control.
  
3. Based on the foregoing and the whole record in this matter, as well as the adopted Findings of Fact and Conclusions of Law included in Staff Report to the Board of County Commissioners dated March 12, 2008, the Application for a Major Variance to reduce the 30 foot sideyard setback requirement to 15 feet, Application V 08-08, is hereby APPROVED subject to the conditions of approval originally imposed by Planning Commission Final Order V 08-08.

Dated this 26<sup>th</sup> day of March, 2008.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: [Signature]  
Anthony Hyde, Chair

By: [Signature]  
Joe Corsiglia, Commissioner

By: [Signature]  
Rita Bernhard, Commissioner

Approved as to form

By: [Signature]  
Office of County Counsel

ATTACHMENT 1

BEFORE THE  
COLUMBIA COUNTY PLANNING COMMISSION  
ST. HELENS, OREGON

In the Matter of the Application of )  
Garr Harrel for a Major Variance to the )  
Sideyard Setback Requirements of the )  
RR-5 Zone )

FINAL ORDER V 08-08

This matter came before the Columbia County Planning Commission on the application of Garr Harrel for a Major Variance to the 30 feet sideyard setback standards for residential structures in the Rural Residential-5 (RR-5) zone. This Variance is to allow for the expansion of an attached garage to be located 15 feet from the site's southern property line. The subject property is located at 33328 Crown Point Drive, Warren, Oregon. The parcel is described on the Columbia County Assessor's records as Tax Account Number 4212-000-01607.

Notice of the land use application was provided to the St. Helens CPAC, affected agencies and surrounding property owners. A public hearing was held on January 7, 2008. The Planning Commission heard testimony from the applicant and interested parties and considered written materials including the Staff Report. A motion was made to deny the variance request. The Commission's votes were split, three in favor of the project and three opposed to the project. A new motion was made to continue V 08-08 to the next regularly scheduled meeting on February 4, 2008 to allow for the submission of additional information from the applicant and opposition.

After due consideration, the Columbia County Planning Commission hereby adopts the findings in the Staff Report dated January 7, 2008, and orders this application (V 08-08) for a Variance to allow an attached garage to be located 15 feet from the side property line, be **APPROVED** with the following conditions:

1. This variance shall become void if the next step in the development process is not applied for within one year.
2. The applicant shall construct the bay onto the existing, attached garage as shown on the submitted site plan. The structure shall have a minimum 15 foot sideyard setback, and shall not encroach into the water easement located along the site's southern property line.

COLUMBIA COUNTY PLANNING COMMISSION

  
\_\_\_\_\_  
DAVID MIDDLE, CHAIRMAN

02-08-08  
DATE

ATTACHMENT 2

**BOARD COMMUNICATION**

FROM THE LAND DEVELOPMENT SERVICES DEPARTMENT  
MEETING DATE: **March 13, 2008**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM:** Todd Dugdale, Director of Land Development Services <sup>TD</sup>

**SUBJECT: PUBLIC HEARING: Appeal of Planning Commission Approval  
Major Setback Variance (V 08-08)  
David Moore & Sheri Conyers, Appellants/Garr Harrel, Applicant  
Tax Parcel No. 4212-00-010607  
33328 Crown Point Drive, Warren**

**DATE:** March 12<sup>th</sup>, 2008

COLUMBIA COUNTY

MAR 13 2008

**SUMMARY:**

COUNTY COUNSEL

Garr Harrel applied for a Major Variance to reduce the sideyard setback requirement of 30 feet in the RR-5 Zone to allow for an attached garage to be located 15 feet from a side property line. The Planning Commission, at their regularly scheduled public hearing on January 7, 2008, continued the case to the February hearing due to a split vote, three to three, leaving the record open for written testimony from the applicant and the opponent. The request was reconsidered at the February 4, 2008 hearing and was approved by the Planning Commission. The Planning Commission's decision of approval was subsequently appealed to the Board of Commissioners. The reasons for appeal and the Staff Report are attached.

Staff and the Planning Commission has made the determination that the applicant has met the requirements for a variance because of the 2 acre property slope, soil type, narrowness and location of the existing septic system. To place an expanded garage for RV storage any where other than the proposed site would create a hardship for the owner and possibly increase possible slide and erosion problems in the sensitive McNulty Creek.

**ATTACHMENTS:**

1. **Appeal/Referral**
2. **BOC Appeal Staff Report for V 08-08 dated March 19, 2008**

**RECOMMENDATION:**

**Staff:**

Staff recommends that the Board of Commissioners deny the appeal and approve Garr Harrel's request to construct an attached garage 15 feet from the subject parcel's southern property line.

# Columbia County Board of County Commissioners

## STAFF REPORT

March 12, 2008

### Major Variance to Sideyard Setbacks

**FILE NUMBER:** V 08-08

**APPLICANT/OWNER:** Garr Harrel  
33328 Crown Point Drive  
Warren, Oregon 97053

**PROPERTY LOCATION:** 33328 Crown Point Drive, Lot 4 of Crown Point Subdivision

**TAX ACCT. NUMBER:** 4212-000-01607

**ZONING:** Rural Residential (RR-5)

**PROPERTY SIZE:** 2 ± Acres

**REQUEST:** The applicant requests a variance to the 30 foot sideyard setback required in the RR-5 zoning district, to build an additional bay onto an attached garage 15 feet from the site's southern property line.

**APPLICATION COMPLETE:** 11/28/07

**150 DAY DEADLINE:** 04/27/08

#### **APPLICABLE CRITERIA:**

<u>Columbia County Zoning Ordinance</u>	<u>Page Number</u>
Section 600 Rural Residential	4
Section 602 Permitted Uses	4
Section 604 Standards	4
Section 1504 Variances	5
Interagency Comments Received	10
Staff Recommendations	11

#### **BACKGROUND:**

The applicant is applying for a variance from Section 604.6 of the Columbia County Zoning Ordinance which requires 30 feet sideyard setbacks for residences and their attached garages/accessory structures. The applicant requests a 15 foot sideyard setback from the southern property line to allow for the expansion of an existing garage house a travel trailer (see attached site plan). The site is located on Crown Point Drive in the Crown Point Subdivision approximately two miles west of Highway 30. Crown Point Drive is a paved, County roadway which

runs west from Blaha Road and dead-ends into a cul-de-sac at the subject property. The existing dwelling receives water from the McNulty Water Association and is served by a septic system. Emergency Services are provided to the site through Columbia River Fire and Rescue.

The subject property is 2 ± acres in size and is developed with a 1,704 ± square foot home with an attached two car garage and a small shed. The boot-shaped parcel (see aerial photograph below) is most narrow along the roadway, (approximately 116 feet wide), and gradually widens to 340 feet as it extends 413 feet back to the western property line. The existing single-family dwelling was constructed on a 130 foot wide section of the property and is setback from the northern (side) property boundary 35 feet and from the southern (side) property boundary 30 feet. There is a 15 foot wide storm sewer easement that runs along the site's northern property line and a 15 foot wide water easement that runs along the site's southern property line. According to the site plan, the proposed garage expansion, to 15 feet from the southern property line, will not encroach upon the water easement.

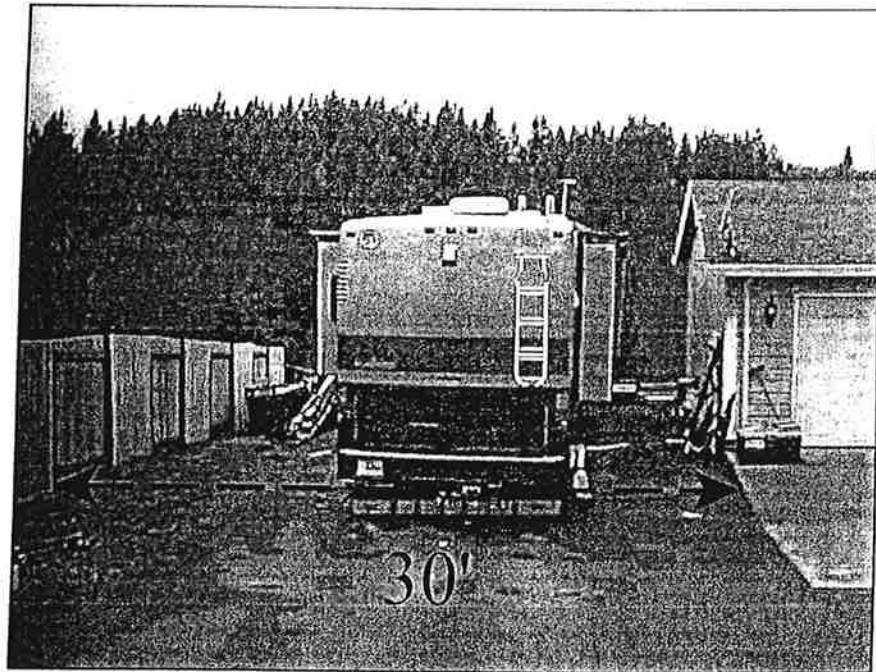
This variance request has been initiated by the applicant because of existing physical characteristics (topography and lot configuration) of the property that have limited the site's buildable area. Topography of the site is characterized by a slope which runs east to west toward McNulty Creek. McNulty Creek, a fish bearing stream, runs along the rear property line. PFOW (Palustrine Forested Intermittently Flooded Temporary) wetlands are associated with the creek. According to the Soil Survey of Columbia County, the site consists of Quatama Silt Loam and Cornelius Silt Loam Soils. Quatama Silt Loam makes up approximately 90% of the site and has an eight to 15 percent slope. Cornelius Silt Loam makes up approximately 10% of the eastern most portion of the site and has a 15 to 30 percent slope. These soils are used for homesite development, but are limiting for such development due to wetness and steepness of slope. When excavated for building sites, Quatama and Cornelius Silt Loam soils are prone to erosion.

The applicant has also indicated that the location of the septic system is a limiting factor for the development of a detached garage. The septic tank is located 15 feet west of the house; a Groundwater Interceptor (GWI) is located 21 feet from the tank and runs west another 50 feet; and a sand filter is located approximately 25 feet northwest of the residence (see attached As-Built Plan of the System). The total septic system extends out from the rear of the residence approximately 100 feet. Structures shall be setback five feet from septic tanks and sand filters and 10 feet from GWIs.





View of Property Facing North



Proposed Expansion Site

**REVIEW CRITERIA:**

**The following sections of the Columbia County Zoning Ordinance apply to this application:**

**Section 600 Rural Residential - 5**

601. **Purpose:** This district is designed for rural areas where parcels at the time of initial zoning designation are committed to non-resource uses consistent with County acknowledged exception areas. Uses in this zoning district are anticipated to be predominantly residential with a rural level of public services; i.e., domestic water from private wells, sewage disposal using on-site systems, adequate fire and emergency service by fire districts, and road access consistent with the County Transportation Plan and County Road Standards. Other uses shall be those customary to such areas, including farm and forest uses and home occupations of a rural character.

**Finding 1:** The subject property is located within the Crown Point Subdivision (S2-97). Crown Point Subdivision consists of seven 2 ± acre parcels, all with frontage on and access to Crown Point Drive, a County roadway. Existing homes in the subdivision receive water services from the McNulty Water District, and dispose of sewage through on-site septic systems. Emergency services are provided to the area by Columbia River Fire and Rescue. The existing single-family residence and proposed attached garage are permitted uses in RR-5 zoned areas, and will not significantly alter the predominantly rural characteristic of this neighborhood. This proposed residential development serves the purpose of the RR-5 zone. Staff finds that the criterion is met.

**Continuing with the Columbia County Zoning Ordinance:**

**Section 602 Permitted Uses:**

- .1 Single family detached dwellings.
- .2 Farm use defined in ORS 215.203(2).
- .3 The propagation and harvesting of forest products.
- .4 Structures accessory to permitted uses, when sited in accordance with the following:
  - A. If attached to the main building or separated by a breezeway, they shall meet the front and side yard requirements of the main building.

**Section 604 Standards:**

- .6 No residential structure shall be constructed closer than 30 feet to a property line. Where the property line abuts resource zoning, the setback shall be increased to 50 feet.



**Finding 2:** The applicant proposes to construct an additional bay onto an existing two car garage that is attached to a single-family dwelling. Single-family dwellings and attached garages are permitted uses in the RR-5 zone. RR-5 zoning designations surround the property to the north, east, and south, and an FA-19 zoning designation is contiguous to the site to the west. The existing dwelling was constructed 30 feet from the northern (side) property line, 35 feet from the southern (side) property line, 106 feet from the eastern (front) property line and 276 feet from the western (rear) property line. The primary structure currently meets the setback requirements of the RR-5 zone.

The applicant's proposal for an attached garage expansion will encroach 15 feet into the required 30 foot setback. Section 1504 of Columbia County's Zoning Ordinance provides relief from setback requirements when unique characteristics of land create "unnecessary hardships" for the development of property. Development of a primary structure to within 15 feet of a property line in the RR-5 zone may be permitted through a Major Variance if approved by the Board of County Commissioners.

**Continuing with the Columbia County Zoning Ordinance:**

**Section 1504      Variances:**

Except as provided in Section 1504.4 below, there are 2 classes of variances to the standards established in this ordinance. A Minor Variance is defined as a request for a variance of less than 25% from a dimensional requirement such as setbacks, height, lot coverage, lot width, or lot depth, or a request for a variance of less than 10% from a minimum lot size requirement. All other variances are considered Major Variances.

Use variances are not permitted under this ordinance except as permitted under Section 1505.1, Temporary Permits: Use Not Allowed in District. Major Variances from the lot size requirements of the Primary Agriculture (PA-38), Forest Agriculture (FA-19), Primary Forest (PF-76) and Rural Residential (RR-5) Zones are not permitted under this ordinance.

1. **Major Variances:** The Planning Commission may permit and authorize a variance from the requirements of this ordinance when unusual circumstances cause undue hardship in the application of it. The granting of such a variance shall be in the public interest.

**Finding 3:** Upon appeal, this application requires the Board of County Commissioners to consider a major variance for a sideyard setback. The applicant requests a 50% reduction in the required 30 foot sideyard setback to expand an attached garage to 15 feet from the site's southern property line. There are unique characteristics of the site that have prompted this request. These unique conditions are discussed in Finding 5 of this report. Additionally, the granting of this variance will be in the public's interest, and is discussed further in Finding 4 of this report. Staff finds that the criterion is met.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1:**

- A. A variance shall be made only when all the following conditions and facts exist:
1. The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property;

**Finding 4:** The granting of this variance will not be detrimental to public safety, health, or welfare, or injurious to other properties. The proposed location of the garage expansion maximizes the site's buildable area without compromising the site's existing topography. The proposed expansion site is flat and is already developed with a concrete pad. Modifications to the terrain, to create a level construction site, will be necessary if locating the garage elsewhere on the property. As discussed previously, Quatama Silt Loam and Cornelius Silt Loam soils are prone to erosion when excavated for building sites. Substantial alteration of the land has the potential to increase soil erosion and land slides (due to the slope of the site) and may disrupt the property's existing drainage system. Minimizing alterations to the terrain is in the public's interest as it may preclude such problems from impacting neighboring properties and/or the wetlands and creek located west of the site.

Furthermore, the proposed garage bay will not negatively impact public utilities or public safety. The garage will not encroach into the 15 foot wide water easement located along the south side of the property, nor will it encroach onto neighboring properties. There are no setback requirements from easements, and McNulty Water has commented that the 15 foot easement allocated for the water line is sufficient for any necessary maintenance. McNulty Water has no objections to the variance request. Likewise, Columbia River Fire and Rescue was notified of the proposed variance and has no objection to the expansion. Finally, the garage bay should not increase vehicular traffic onto Crown Point Drive. Staff finds that the criterion is met.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1(A):**

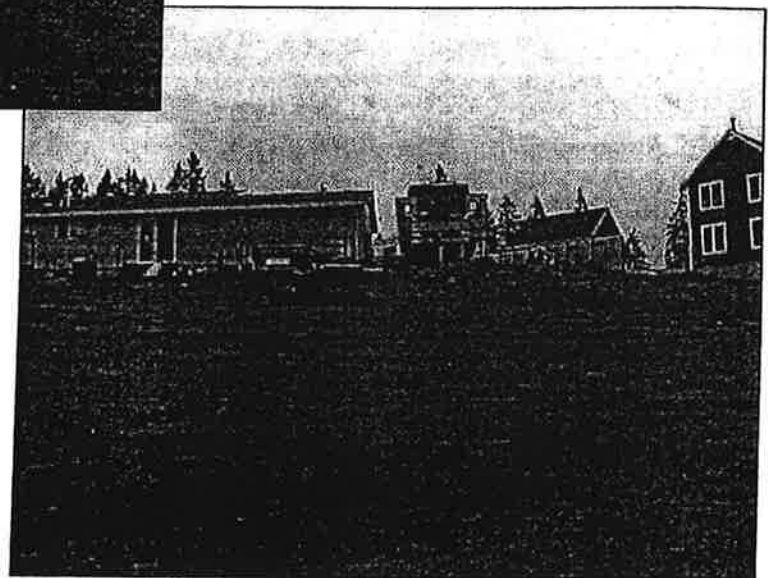
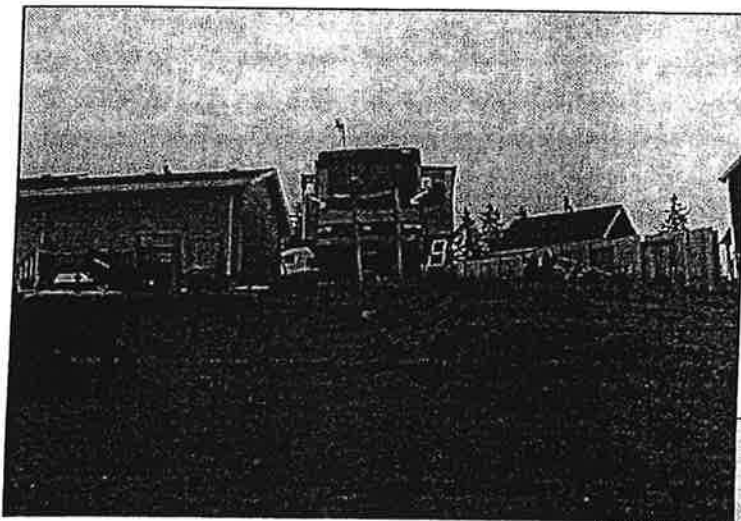
2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;

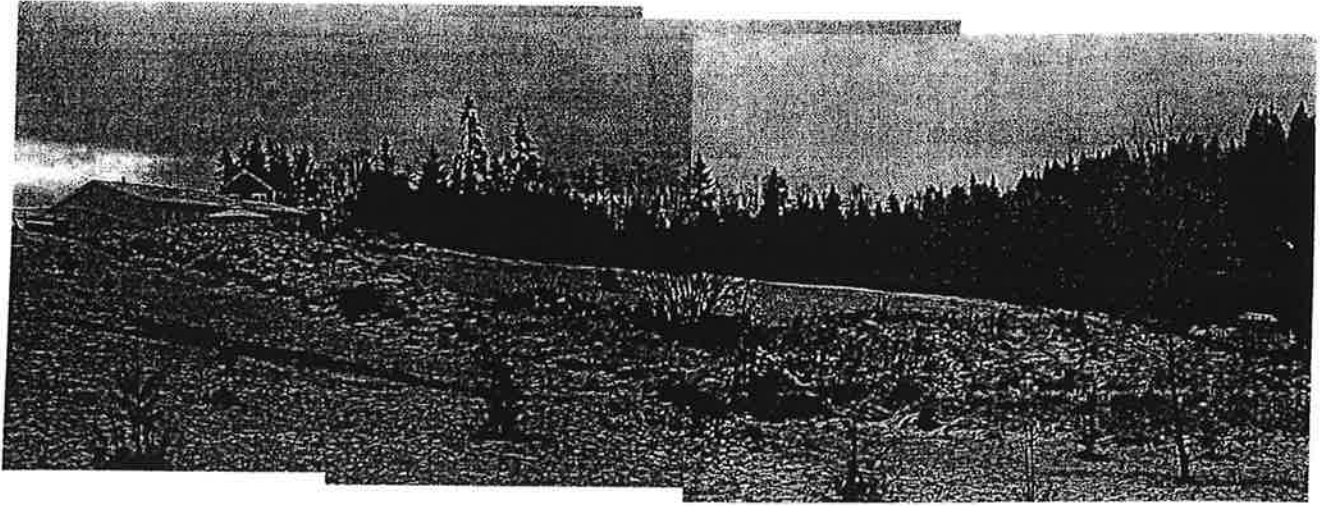
**Finding 5:** This variance proposal is based on the topography and configuration of the subject property. All lots within the Crown Point Subdivision consist of terrain with an east to west slope. Lots three, four and five, however, appear to contain a more significant slope than other properties in the subdivision (see attached contour drawing). The contour map shows the subject property containing an approximate 20% slope from Crown Point Drive to the rear property line, and a retaining wall, stabilizing the slope of the front yard, is indicative of the significance of this slope. Development of a detached garage, is not only limited in the front and rear yards because of the terrain (see photos below), but because of the existing septic system as well. The septic system is located 15 feet from the rear of the house and extends approximately 100 feet into the rear yard. Development of a detached garage west of the dwelling, would therefore, need to be located at least 110 feet from the house.

The property adjacent to the site to the north, lot three of Crown Point Subdivision, was recently developed with a 36'x36' pole barn. Development of this accessory structure required an eight or nine foot cut into the ground to create a level building site. On a recent site visit, staff identified erosion potential associated with the removal and

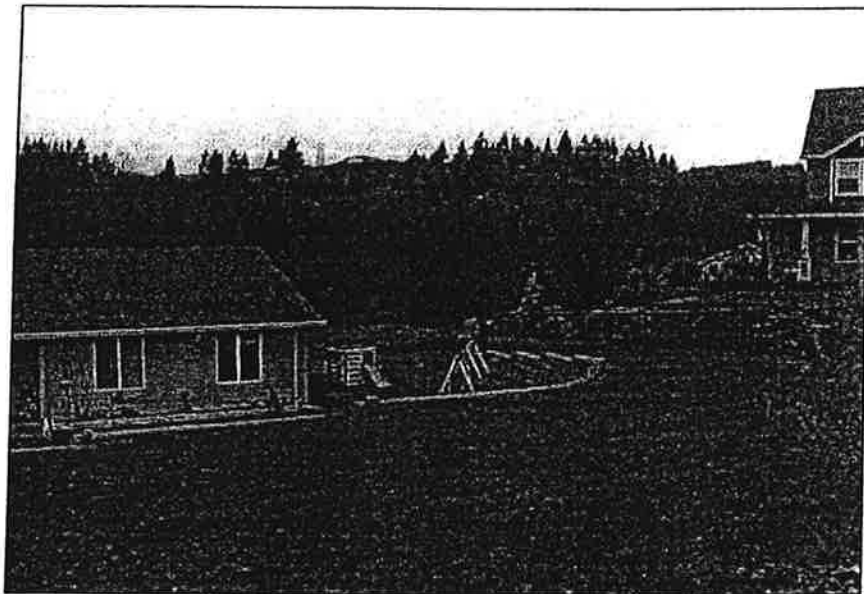
fill of dirt on a property of similar topography and soils. The slope of the subject property would require the applicant to excavate a substantial amount of earth to build a garage/storage structure in the rear yard.

Lot configuration of the subject property is also unique to this site and is limiting for further development. The existing residence is constructed on a narrow section of the property and is setback 35 feet from the northern property line and 30 feet from the southern property line. There are flat areas on either side of the residence, which could accommodate the proposed expansion, but the narrowness of the lot prohibits development to the north or south without encroaching into the required 30 foot setback. The applicant explored the possibility of placing a detached garage in the sideyard. Detached accessory structures are only required to meet a five foot sideyard setback in the RR-5 zone. However, existing easements prohibit the applicant from utilizing the reduced sideyard setback. The subject property has a 15 foot wide storm sewer easement, that runs from the cul-de-sac to McNulty Creek, along the north side of the property and a 15 foot wide water easement that runs along the south side of the property. No other lot in Crown Point subdivision contains the storm sewer easement. Other lots in the subdivision contain easements, but they are not typically located along both sides of the most narrow section of the property. These easements are not responsible for restricting development of an attached garage, but they do limit development of a detached, accessory structure. Staff finds that the criterion is met.





View of Rear Yard Slope



View of Front Yard Slope and North Sideyard

**Continuing with the Columbia County Zoning Ordinance Section 1504.1(A):**

3. Approval of the application will allow the property to be used only for purposes authorized by the Zoning Ordinance;

**Finding 6:** The subject property is zoned for residential use. The proposed garage expansion is attached to the single-family dwelling and is, therefore, considered part of the primary structure. Garages are common accessory uses to residential structures and are permitted in the RR-5 zone. Columbia County's Zoning Ordinance authorizes the proposed use of this property. Staff finds that the criterion is met.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1(A):**

4. Strict compliance with the Zoning Ordinance would create an unnecessary hardship;

**Finding 7:** Strict compliance with the Zoning Ordinance to maintain a 30 foot sideyard setback will result in physical and financial, "unnecessary" hardships for the applicant. Although development of the subject property is not entirely prohibited, there are characteristics of the site that significantly limit development. These characteristics include topography, location of the septic system and narrowness of the lot, and are discussed in detail in Finding 5 of this report. The proposed garage expansion area is flat and is located on the only portion of the property not requiring significant modifications to the land for construction. Development of a detached garage to the rear or front of the house is not possible without excavating the site to create a level building area. Furthermore, construction of a detached garage directly west of the house would require the applicant to move the septic system. The applicant could construct a detached garage approximately 110 feet west of the existing dwelling, but the slope of the site becomes increasingly greater as the lot nears the western property line and McNulty Creek. If this option were pursued, substantial modifications to the terrain would be necessary to create a buildable area, increasing chances of erosion and/or slide potential given the type and slope of the soils. Staff finds that the criterion is met.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1(A):**

5. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor violate any other provision of the Zoning Ordinance.

**Finding 8:** The existing dwelling and attached garage are consistent with the Comprehensive Plan and the Zoning Ordinance provisions for residences in RR-5 zones. The applicant's request to reduce the sideyard setback does not violate any other provisions of these documents. Staff finds that the criterion is met.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1:**

- B. A variance so authorized shall become void after the expiration of 1 year if the next step in the development process has not been applied for.

**Finding 9:** If this variance is approved, the applicant shall take development action within 1 year or this approval will expire. Staff finds that the criterion is met with applicable conditions.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1:**

- C. The Planning Commission may impose whatever reasonable requirements it feels will fulfill the intent of this ordinance.

**Finding 10:** Upon appeal, the Board of County Commissioners may add conditions to their decision regarding this variance proposal if deemed necessary.

**COMMENTS:**

**St. Helens CPAC:** Recommends denial of the application for the following reason:  
The Codes and Zoning Ordinance are for everyone's benefit and should not be given variances because of poor planning by the owner, builder or developer.

**McNulty Water Association:** No objection

**Columbia River Fire and Rescue:** No objection

**County Sanitarian:** No objection

**County Roadmaster:** No comment

**County Surveyor:** No comment

**Property Owner, 33355 Crown Point Drive:** Voiced concerns about the aesthetics of the project on December 26, 2007

**Property Owner, 33336 Crown Point Drive:** See attached objections received December 26, 2007 and January 7, 2008

**Appeal:** Reduces neighboring property values substantially; See attached summary dated February 8, 2008

No other Comments received as of the date of this Staff report, March 12, 2008).

## CONCLUSION, RECOMMENDATION AND CONDITIONS:

The request discussed throughout this report meets the Variance Criteria set forth in Section 1504 of Columbia County's Zoning Ordinance. Unique characteristics of the site include topography, the location of the existing septic system and the narrowness of the lot. The subject property slopes significantly east to west from Crown Point Drive to the rear property line and consists of soils identified in the Soil Survey of Columbia County as being limiting for development based on their steepness of slope and vulnerability toward erosion. These physical constraints limit the feasibility of placing a structure anywhere on the site other than the proposed location. Development of a detached structure in the rear or front yards would result in an unnecessary hardship for the applicant, requiring substantial modifications to the site's terrain, increasing the potential for soil erosion and land slides. The area proposed for the garage expansion is flat and can be developed without major excavations of the land. Furthermore, construction of a garage 15 feet from the property line will not be detrimental to public safety, health or welfare, and public safety and utility officials have no objections to the variance request.

Variance 08-08 was first heard by the Planning Commission on January 7, 2008. The Commission listened to testimony, discussed the application and a motion was made to deny the variance request. The Commission's votes were split, three in favor of the project and three opposed to the project. A new motion was made to continue Variance 08-08 to the February Planning Commission hearing, leaving the record open for written testimony from the applicant and the opponent. The Planning Commission reconsidered the request at their February 4, 2008 meeting and approved Variance 08-08.

Based on the findings in the above staff report (V08-08), Staff and the Planning Commission recommend this request for a variance to the 30 foot sideyard setback in the RR-5 zone, be **APPROVED** subject to the following conditions:

### Conditions of Approval:

1. This variance shall become void if the next step in the development process is not applied for within one year.
2. The applicant shall construct the bay onto the existing, attached garage as shown on the submitted site plan. The structure shall have a minimum 15 foot sideyard setback, and shall not encroach into the water easement located along the site's southern property line.

Attachments: Appeal

Preliminary Garage Expansion Design With and Without Variance  
*(submitted by applicant between January and February hearings)*

Photographs of Subject and Neighboring Properties  
*(submitted by applicant between January and February hearings)*

Crown Point Subdivision Covenants, Conditions and Restrictions  
*(submitted by opponent between January and February hearings)*

Property Owner's Objection Dated January 7, 2008

Property Owner's Objection Dated December 26, 2007

Contour Map

As-Built Plan of Septic System

Submitted Application

Site Plan

Zoning Map

Address Map

Vicinity Map