

RESOLUTION NO. 2016-02

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WAPATO,
WASHINGTON, FOR A LAND USE VARIANCE ON PROPERTY LOCATED AT
302 WEST 2ND STREET**

WHEREAS, in accordance with Wapato Municipal Code (WMC) Chapter 17.21, an application for Variance was submitted by Gary and Debbie Lusk, Kyle Lusk, and Jeff Lusk (hereinafter referred to as “applicants”) to the City of Wapato on November 30, 2015;

WHEREAS, applicants are applying for a Variance to continue using the Mid-Valley Recycling site at 302 West 2nd Street in Wapato, Parcel Number 191115-12491, as-is;

WHEREAS, the subject property is located in the B-2 (Local Business) Zoning District where a recycling center is not an allowed use;

WHEREAS, the subject property is owned by Rick and Imogene Ames, who signed the application as property owners;

WHEREAS, the application was determined to be Complete for further processing on December 2, 2015;

WHEREAS, public notice was provided to property owners within 300-feet of the site and a legal ad was published in the Toppenish Review-Independent on December 17, 2015;

WHEREAS, no public comments were received during the comment period;

WHEREAS, at the January 4, 2016 City Council meeting, the Council held an open record public hearing to consider this Variance request;

WHEREAS, the Council opened the floor to public comment on the proposed Variance;

WHEREAS, the applicants for the Variance provided testimony in favor of their proposal;

WHEREAS, staff presented a Staff Report (herein incorporated by reference as Exhibit A) that recommended approval of the Variance, subject to one condition;

WHEREAS, Fire Chief Valdez added an additional condition that the property be kept and maintained in a clean manner, including cleanup at night and the prompt removal of large items such as appliances from the public view;

WHEREAS, there was no testimony against the proposal;

WHEREAS, after consideration of the applicant's testimony, the staff report, and additional comment from Fire Chief Valdez, and in following the procedural duties of WMC § 17.21.060, with the concurrence of the applicants, the Council voted unanimously to make a final written decision on the Variance on January 19, 2016;

WHEREAS, the applicant agreed, on the record, to allow the final written decision to be entered on January 19, 2016, extending the timeframes required in WMC § 17.21.060, and,

WHEREAS, on January 19, 2016 the City Council re-visited this Variance request and voted unanimously to approve the variance request, subject to conditions as outlined herein.

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Wapato, Washington, as follows:

Section 1. Testimony in favor of the Variance was provided at the hearing by the applicants. There was no testimony provided in opposition. The City staff report was also provided as testimony.

Section 2. The proposed Variance is in compliance with the five (5) criteria found in WMC Section 17.21.030, as documented in the staff report, attached hereto as Exhibit A, and fully incorporated in this determination.

Section 3. The proposed Variance is the minimum Variance necessary to allow reasonable use of the land and is consistent with the general purpose and intent of WMC Title 17. No new uses are being proposed for the property.

Section 4. The applicants are hereby granted approval of this Variance request under WMC Chapter 17.21 to continue the operation of a recycling center on property located at 302 West 2nd Street in Wapato, WA, Parcel # 191115-12491, subject to the following conditions:

1. Expansion of the use onto adjacent or nearby properties shall not be permitted now or in the future.
2. The property shall be kept and maintained in a clean manner, including cleanup at night and the prompt removal of large items such as appliances from the public view.

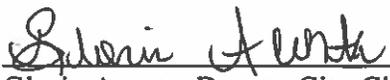
Section 5. In accordance with WMC Section 17.21.080, this decision of the City Council may be appealed to the Yakima County Superior Court.

PASSED AND APPROVED this 19th day of January, 2016



Jesse Farias, Mayor

ATTEST:



Gloria Acosta, Deputy City Clerk-Treasurer

Approved as to form:



Sara Watkins, Attorney

1st Touch Date: 11/9/14

2nd Touch Date: 11/9/14

EXHIBIT "A"

STAFF REPORT

TO: Wapato City Council
FROM: Joseph Calhoun
Yakima Valley Conference of Governments
DATE: January 4, 2016
SUBJECT: Variance – Mid Valley Recycling. Project Applicants: Gary and Debbie Lusk, Kyle Lusk, and Jeff Lusk.

Site

The subject parcel is located at 302 West 2nd Street, Wapato, Assessor Parcel No. 191115-12491 (0.3 acres). The parcel is owned by Rick and Imogene Ames and is zoned B-2 (Local Business) with a Comprehensive Plan Future Land Use Map designation of Commercial. The existing structure on-site was constructed in 1955 and has been the location for Mid Valley Recycling for several years.

Proposal

Gary and Debbie Lusk, Kyle Lusk, and Jeff Lusk are proposing a variance to allow the continuance of the existing Mid Valley Recycling business. In their application, they provided the following:

We are applying for a variance to continue using Mid Valley Recycling as-is. We feel the recycling center provides a valuable service to the community of Wapato. The recycling center allows people to bring in all old, broken and unwanted metal, batteries and recyclable items. This keeps them out of the landfills and out of their yards. The large containers out front fill up and are emptied weekly with these things. We do not make a lot off this but feel these same people wouldn't pay to dump it and it would sit in their yards or be dumped illegally somewhere else. It helps keep your town cleaner.

We also understand the need for improvements and plan to paint the building in the spring as weather permits. We also would like to keep the large containers and paint them the same color as the building so they blend in instead of stick out. If we can't keep them we wouldn't be able to accept the things that go into them. Also we will be taking all small containers in at night and keeping the parking lot clean. We have already cleaned up some on the outside and got rid of broken and unsightly containers. We just don't want to put too much into this if we can't keep the center going.

We all know that vacant buildings are never good for communities with loss of revenue to the city so we hope you will consider this too.

We have been in the recycling business for over 14 years on the west side of the mountains so we have the knowledge of what it takes to run this kind of business successfully. We just hope to have the chance to work with you and keep this business here. Thank you for considering this.

Public Notice

Public notice was provided in the following manner:

- Notice of Application and Public Hearing, distributed: December 17, 2015

- Notification of properties by mail within 300' of subject property: December 17, 2015
- Notice of public hearing posted in official newspaper of the City (*Toppenish Review Independent*): December 17, 2015

State Environmental Policy Act (SEPA)

SEPA Environmental Review was not required for this project per WAC 197-11-800(6)(e).

Current Zoning and Land Uses

The subject parcel is zoned B-2. Mid Valley Recycling has been in operation for several years.

Characteristics of properties adjacent to the subject properties are:

<i>Location</i>	<i>Zoning</i>	<i>Land Use</i>	<i>Jurisdiction</i>
North	B-2	Car Wash	City of Wapato
South	R-1	Residential	City of Wapato
East	B-2	Construction firm	City of Wapato
West	B-2	Professional Service	City of Wapato

Surrounding land uses are mostly service oriented, with one residence across the street to the south. The property location is on the southern end of the West 1st Street commercial corridor.

Floodway and Shoreline

Floodway

The subject parcel does not fall within or near a floodplain.

Shoreline

The subject parcel does not fall within a designated Shoreline Environment as regulated by the Yakima County Regional Shoreline Master Program.

Concurrency

This project is not a change in use. Concurrency is not required per WMC § 17.88.020(A).

Comprehensive Plan Future Land Use Designation

The Comprehensive Plan FLUM designation of the subject parcel is Commercial.

Standards for Approval of Variance requests

WMC § 17.21.030 establishes the following criteria which must be met in order to approve a variance application (*staff response in italics*):

- a. **That granting the variance will be consistent with the general purpose and intent of this title and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.** *Granting of this Variance request is consistent with the purpose and intent of WMC Title 17, and will not be injurious to the neighborhood nor to the detriment of public welfare.*
- b. **That granting the variance will not permit the establishment of any use not permitted in a particular zoning district.** *While the use of a Recycling Center is not*

an allowed use in the B-2 zoning district, it is an already established use at the subject property. The granting of this Variance will not establish a new use. Rather, it will allow the continuation of an existing use.

- c. **That unique circumstances exist. There must exist special circumstances or conditions...applicable to the land or structures for which the variance is sought. The special circumstances or conditions must be peculiar to such land or structures and not generally applicable to land or structures in the neighborhood. The special circumstances or conditions must also be such that the strict application of the provisions...would deprive the applicant the reasonable use of such land or structure. *This property has been used as a recycling business for several years. The new owners/operators desire to continue running the business as-is.***
- d. **That unnecessary hardship exists. It is not sufficient proof of hardship to show that lesser cost would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created, nor can it be established on the basis of one who purchases without knowledge of the restrictions. It must result from the application of this title to the land or structure. It must be suffered directly by the property in question and evidence or variance granted under similar circumstances shall not be considered. Neither conforming uses or neighboring land or structures, nor buildings in other zoning districts, shall be considered as controlling factors for the issuance of a variance. *The subject property has been the location for Mid Valley Recycling for several years. It would be an unnecessary hardship to close down an established business due to a change in operational ownership. This is unique to the subject property and is not contingent upon a similar circumstance on a neighboring property or building.***
- e. **The granting of the variance is necessary for the reasonable use of the land or structure and that the variance as granted by the city council is the minimum variance that will accomplish the purpose. *Granting of this variance request is necessary for reasonable use of the land and structure. This is the minimum variance necessary to accomplish the property owner's goal. The existing operation will be allowed to be continued as-is, and not allowed to expand to any neighboring property.***

Findings & Conclusions

1. The public notice requirements of the Wapato Municipal Code have been satisfied.
2. SEPA review was not required.
3. Adequate public services and road access are available to serve the proposed use.
4. Surrounding land uses are compatible with the continuation of the existing use.
5. The public use and interest will be served.

Recommendation

The Yakima Valley Conference of Governments, acting as staff for the City of Wapato, recommends that this Variance request be **approved**, subject to the following condition:

1. Expansion of the use onto adjacent or nearby properties shall not be permitted now or in the future.