

# SHORELINE MANAGEMENT PERMIT

## ACTION SHEET

RECEIVED

APR 03 2019

**Application #:** VAR 2018-333  
RipV 2018-334  
SV 2018-335

CHELAN COUNTY  
COMMUNITY DEVELOPMENT

**Administering Agency** Chelan County Department of Community Development

**Type of Permits** ■ Variance - APPROVED  
**And Action:** ■ Riparian Variance - DENIED  
■ Shoreline Variance - DENIED

**Date of Action:** April 3, 2019.

**Date Mailed to DOE/AG**

Pursuant to Chapter 90.58 RCW, the Chelan County Shoreline Master Program, the Chelan County Comprehensive Code and the Chelan County Code, the above-referenced permits are hereby approved for:

**Kathryn Gilliland  
1284 S Lakeshore  
Chelan, WA 98816**

To undertake the following development: An application for a variance, riparian variance and a shoreline variance to reduce the front yard setback from twenty five feet (25') to two (2') from the property line, a reduced riparian buffer from twenty five feet (25') to sixteen feet five inches (16'5") from the ordinary high water mark and to reduce the common line setback from twenty feet three quarters of an inch (20.75') to sixteen feet five inches (16'5") for construction of a single family residence.

Upon the following property: 1284 S Lakeshore Rd, Chelan, WA 98816, Chelan, WA 98816.

Within 200 feet of Lake Chelan and/or its associated wetlands.

The project will be within a shoreline of statewide significance (RCW 90.58.030). The project is located within a Rural shoreline designation.

The following Shoreline Master Program provisions are applicable to this development: Sections 7, 9, 11, 16, 21, 27 and 29.

**All conditions imposed herein shall be binding on the “Applicant,” which terms shall include the owner or owners of the property, heirs, assigns and successors.**

### **CONDITIONS OF APPROVAL**

1. Pursuant to CCSMP, Section 9.8 and CCC, Section 11.78.230(2)(A), the applicant/owner shall comply with the proposed mitigation planting plan, date stamped, October 8, 2018. This plan includes the planting of the six (6) native trees within the reduced riparian buffer area.
  - 1.1. All vegetation shall be installed prior to certificate of occupancy of the residence.
2. Pursuant to RCW 27.53.020, and CCSMP Section 27, if the applicant or their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/ agent shall immediately notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination. A cultural resources survey may be required.
  - 2.1 The applicant shall keep an Inadvertent Discovery Plan (IDP) onsite during all ground-disturbing activities, including mitigation plating. A sample of this plan is attached as Exhibit A.
3. Pursuant to CCSMP, Section 16, the proposed single family residence shall not exceed thirty-five (35) feet in height above average grade level.
4. Pursuant to CCC, Chapter 11.86, a geologic site assessment is required to be submitted at time of building permit submittal.
5. Pursuant to CCC, Section 11.78.090(2), vegetation within the riparian buffer shall be maintained as riparian habitat. Noxious weeds in the riparian buffer should be controlled according to best management practices. The Chelan County noxious weed control board should be consulted for recommendations. Where riparian buffer vegetation disturbances have occurred, only revegetation with locally prescribed native vegetation is permitted, except as provided for in this section. Consultation with one of the following agencies is recommended: the WSU Cooperative Extension Service, the Chelan County Conservation District, the Washington State Department of Ecology, the Washington State Department of Fish and Wildlife, or the USDA-Natural Resource Conservation Service.
6. Pursuant to CCC, Section 11.78.090, all riparian buffers shall be temporarily fenced between the construction activity and the riparian buffer with a highly visible and durable protective barrier, such as filter fencing and straw bales, during construction to prevent access and protect the riparian buffer. The administrator may waive this requirement if an alternative to fencing which achieves the same objective is proposed and approved.
7. Pursuant to CCC, Section 11.95.050, In any case where a variance is granted under the terms of this title, no building or other permit shall be issued until after the end of the appeal period allowed in Title 14 of this code. An appeal of the decision shall automatically stay the issuance of building or other permits until such appeal has been completed.

8. Pursuant to CCC, Section 11.95.060, the granting of a variance and the conditions set forth runs with the land; compliance with the conditions of the variance is the responsibility of the current owner of the property, whether that is the applicant or a successor.
9. Pursuant to CCC, Section 11.95.070, upon final action of the hearing examiner as set forth in the provisions of this chapter, the department of building/fire safety and planning shall not accept filing of the application for substantially the same matter within one year from the date of the final denial of the application.
10. Pursuant to CCC, Section 11.95.080, a variance shall become void three years after approval if no substantial construction has taken place or such other time period as established by the hearing examiner.
11. No structure may be located closer to the Ordinary High Water Mark than the common line setback (20.75').

### **FINDINGS OF FACT**

1. This is an application for a variance, riparian variance and a shoreline variance to reduce the front yard setback from twenty five feet (25') to two (2') from the property line, a reduced riparian buffer from 25 feet to sixteen feet five inches (16'5") from the ordinary high water mark and to reduce the common line setback from 20.75' to sixteen feet five inches (16'5") for construction of a single family residence.
2. The applicant/owner is Kathryn Gilliland, 1284 S Lakeshore, Chelan, WA 98816.
3. The agent is Grette Associates, LLC, Attn: Anne Hessburg, 151 S Worthen St, Suite 101, Wenatchee, WA 98801.
4. The subject property is located at 1284 S Lakeshore Rd, Chelan, WA 98816, Chelan, WA 98816.
5. The parcel number is 27-22-08-705-136
6. The legal description is Minneapolis Beach Lot J.
7. The proposed development is not within an Urban Growth Area.
8. The Comprehensive Plan designation is Rural Waterfront (RW)
9. The zoning designation is Rural Waterfront.
10. As stated in the JARPA, question 5(o), the subject property contains the following structures:
  - 10.1 Cabin with attached deck (not identified in 2003 Assessor's records or within the Chelan County building records). An email from the applicant's agent on October 2, 2018 identifies the cabin shown on the site as a storage building that is not used for habitation.
  - 10.2 Pumphouse, see easement AFN 246803
  - 10.3 Seawall/armoring (no permit information)
  - 10.4 Concrete boat launch (no permit information)
  - 10.5 Crib dock (no permit information)
  - 10.6 Existing buoy to remain (no permit information)
11. As stated in the JARPA, question 5(l), the property consists of gently sloping upland leading to a rock and concrete armored shoreline at the OHWM. Some of the concrete has broken over time and

VAR 2018-333/RIPV 2018-334/SV 2018-335

Gilliland

Page 3 of 11

there is some erosion behind some sections of the shoreline between the existing crib dock and the seawall. The upland between the road and shoreline is gently sloping and in lawngrass. A majority of the property is in lawngrass, with a few coniferous trees and a few shrubs near the road. There is a low level of fish and wildlife habitat on site due to the size of the lot and lack of native vegetation. Below OHWM habitat consists of moderately sloping, unvegetated rock and cobble.

12. The site size is 0.15 acres per Chelan County Assessor's records.
13. The property to the north is Lake Chelan.
14. The property to the south is South Lakeshore Road and is zoned Rural Recreational/Residential (RRR).
15. The property to the east is in residential and recreational use and is zoned Rural Waterfront (RW).
16. The property to the west is in residential and recreational use and is zoned Rural Waterfront (RW).
17. According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the subject site does not contain protected habitat species or plants but is located within the riparian shoreline.
18. According to the Federal Emergency Management Agency, FIRM panel # 2300150225A, there is no floodplain on the subject parcel. The waterbody is a controlled reservoir.
19. According to the Chelan County GIS mapping, the property is located within a potential geologically hazardous area due to erodible soils. CCC, Chapter 11.86, Geologically Hazardous Overlay District, applies to the subject property.
20. According to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject site does not contain wetlands.
21. There are no known cultural resources on the subject property. Pursuant to CCSMP Section 27, developers shall notify local governments of any possible archaeological materials uncovered during excavation.
22. Construction will begin upon receipt of all permits; and end approximately one month from start date.
23. Access is provided by South Lakeshore Road, a public right-of-way.
24. Noise is similar to other residential and recreational uses. Construction noise will occur during demolition of the existing dock and installation of the new pier and boatlift. The project is required to comply with CCC, Chapter 7.35, Noise Control.
25. Visual impacts will be from the water and surrounding properties. Adjacent properties include piers and boatlifts, so visual impacts will be similar to what currently exists in the area, except for the proposed residence, which will interfere with the views of the downlake neighbor.
26. The Notice of Application was referred to surrounding property owners within 300 feet (excluding 60 feet right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on December 5, 2018, with comments due January 4, 2019. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received:
  - 26.1 Confederated Tribes of the Colville Reservation responded on November 28, 2018.
  - 26.2 Chelan County Fire Marshal responded on January 7, 2019.
27. The following agencies were notified but did not respond:

- 27.1 Chelan County Assessor
- 27.2 Chelan County PUD
- 27.3 Washington State Department of Natural Resources
- 27.4 Washington State Dept. of Ecology
- 27.5 Washington State Dept. of Fish & Wildlife
- 27.6 US Department of Fish & Wildlife
- 27.7 US Army Corps of Engineers
- 27.8 Department of Archaeology & Historic Preservation
- 27.9 Yakama Nation
- 28. There was one (1) public comment received from Terry Burnham. Mr. Burnham is concerned about his view uptake, concerned the front yard variance and the view up Lakeshore Road.
- 29. Pursuant to WAC 197.11.800(6), variance requests that do not result in an increase in density are categorically exempt from the environmental review process.
- 30. The application was submitted on October 8, 2018.
- 31. A Determination of Completeness was issued on November 20, 2018.
- 32. The Notice of Application was provided on December 11, 2018.
- 33. The Notice of Public Hearing was provided on February 22, 2019.
- 34. The Comprehensive Plan was reviewed. Specifically, the goals and policies related to the Rural Waterfront land use designation for consistency with proposed recreational land uses.
  - 34.1 The Comprehensive Plan states that the purpose of the Rural Waterfront Designation is to provide the opportunity for the development, redevelopment and infill of existing intensely developed shoreline areas for residential, and water related/water dependent recreational and tourist development consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan.
  - 34.2 The Hearing Examiner finds that the project, as approved and conditioned, is consistent with the Comprehensive Plan.
- 35. This site is located along Lake Chelan within the 'rural' shoreline designation and is classified as a Shoreline of Statewide Significance, pursuant to WAC 173-20-100.
  - 35.1 The common line setback has been calculated as follows:
    - 35.1.1  $16.5' \text{ (adjacent lot to the north)} + 25' \text{ (adjacent lot to the south)} = 41.5' / 2 = 20.75' \text{ from the OHWM.}$
  - 35.2 The project as approved is consistent with Goal E, Goal for Shoreline Use Element: Assure an appropriate pattern of sound development in suitable locations without diminishing the quality of environment along the shorelines.
- 36. The project is consistent with the following Shoreline Works and Structures policies:
  - 36.1 Shoreline structures should be located and constructed in such a manner which will result in no significant adverse effects on the adjacent shorelines, will minimize alterations of the natural shoreline, and have no long term adverse effects on fish habitat.

- 36.2 Shoreline structures should be designed and located to avoid significant damage to ecological values or to natural resources which would create a hazard to adjacent life, property and natural resource systems.
- 37. The project is consistent with Chelan County Code Section 11.04.020 in the following respects:
  - 37.1 A single family residence is a permitted use in the RW zoning district.
  - 37.2 The proposed development is permitted.
- 38. The project is consistent with Chelan County Code Section 11.16.020 in the following respects:
  - 38.1 The RW zoning district requires a 25 foot setback from the front property line. The site plan of record shows the proposed front yard setback at 2 feet from the front property line. There is a 25 foot riparian buffer and a 20.75 foot common line setback that encumbers the property.
  - 38.2 The proposed residence does not meet the front yard setback. Therefore a variance from this standard has been granted.

### **SHORELINE VARIANCE ANALYSIS**

- 39. The project is not consistent with Chelan County Shoreline Master Program Section 29.2 in the following respects:
  - 39.1 In order for a shoreline variance to be granted, the applicant has the burden of proof to present evidence to demonstrate compliance with all of those criteria set forth in CCSMP 29.2.2.
  - 39.2 The applicant has failed to demonstrate that the strict application of bulk, dimensional or performance standards set forth in the CCSMP precludes a reasonable permitted use of the property. With a variance to the front yard setback, the applicant can, without varying from the common line setback, construct a reasonably sized single family residence on the subject property. A variance to the common line setback is not required for the applicant to reasonably use their property.
  - 39.3 Although the lot in question certainly has an unusual shape, this unusual shape does not preclude the applicant's reasonable use of the property with the granting of a variance for the front yard setback and utilizing the established common line setback.
  - 39.4 The granting of a variance to the common line setback is unnecessary and would exceed the minimum necessary to afford relief. The common line setback, combined with the front yard variance, provides the applicant ample building space for a reasonably sized single family residence.
  - 39.5 The granting of this shoreline variance would impact public interest because utilizing the common line setback is sufficient to allow the applicant to build a reasonably sized single family residence.

### **RIPARIAN VARIANCE ANALYSIS**

- 40. The applicant is requesting that the riparian setback be changed from 25 feet to 16 feet 5 inches.

41. The Hearing Examiner finds that the 20.75' common line setback is sufficient to afford the applicant relief necessary to construct a reasonably sized single family residence. A shoreline variance is therefore not necessary.
42. To that extent, reducing the riparian setback to 20.75' is consistent with CCC 11.95.030 as follows:
  - 42.1 Reducing the riparian setback to the common line setback is necessary for the preservation of the property right of the applicant substantially the same as is possessed by owners of other property in the neighborhood.
  - 42.2 The plight of the applicant would be due to the unique circumstances which are the shape of this lot. However, the reduction of the riparian setback to the common line setback, when combined with the variance to the front yard setback, does afford the applicant a reasonable building envelope for a single family residence on this property.
  - 42.3 There is no evidence that the hardship asserted by the applicant is the result of the applicant's own actions. However, it is undisputed that the claimed hardship existed when the applicant acquired the property.
  - 42.4 Allowing a riparian variance to 16 feet 5 inches would be detrimental to public welfare and would be injurious to the downlake property owner because of view impacts and because the common line setback is sufficient to allow the applicant to construct a reasonably sized single family residence. It would also be a greater variance than necessary to afford the applicant relief.
43. Additionally, the riparian variance must comply with the criteria set forth in CCC 11.78. Although the condition for which the variance is requested existed at the time the applicant acquired the property, because the common line setback does afford the applicant reasonable relief so that when combined with a front yard variance, the applicant can locate a reasonably sized single family residence on the applicant's property, the variance of the riparian setback to the common line setback (20.75') is consistent with the criteria set forth in CCC Chapter 11.78 and Chapter 11.80.
44. The Hearing Examiner also finds that denying the requested shoreline variance and riparian variance to 16 feet 5 inches, while granting the front yard setback, provides a greater protection for the shoreline environment. Although the distance between the requested riparian and shoreline variances and the common line setback may seem minimal (approximately 4 feet) the fact is that the common line setback, when combined with a front yard variance, does provide the applicant with space to construct a reasonably sized residence.
45. The Hearing Examiner would specifically point out that the Hearing Examiner does not agree with the view corridor analysis provided by the applicant. The Applicant's Exhibit 2 has a red line purporting to show the view from the downlake property. However, this is measured from the very northern portion of the downlake property's deck, thereby showing, in the applicant's mind, a lack of view impact. However, when you take the view from the downlake property's home, and not the northernmost point of the deck, it is quite obvious that the "proposed residence" of the applicant on Exhibit 2 would substantially interfere with the downlake property's uplake view.

#### **FRONT YARD VARIANCE**

46. The applicant is requesting a front yard variance from 25 feet to 2 feet.
47. This front yard variance is governed by CCC 11.95.030, and the applicant has the burden of proof to show compliance with those criteria.

48. The applicant has demonstrated compliance with CCC 11.95.030 as relates to the front yard setback as follows:
- 48.1 The variance is necessary to allow the applicant a sufficient buildable space in order to construct a reasonably sized residence, when combined with utilizing the common line setback.
  - 48.2 The applicant's plight is related to the unusual shape of this lot. However, when combined with the common line setback, a variance to the front yard setback will allow the applicant to reasonably use this unusually shaped lot.
  - 48.3 The hardship asserted by the applicant is not the result of the applicant's own actions. However, the applicant was well aware of the shape of the lot as well as the restrictions to the lot created by the various setbacks, when the applicant acquired the property.
  - 48.4 The granting of this front yard setback would not be materially detrimental to public welfare or safety or be injurious to properties in the neighborhood or otherwise detrimental to the objectives of the Comprehensive Plan because a variance to a 2 foot setback is the minimum necessary to afford the applicant relief in order to construct a single family residence on the subject property, utilizing the common line setback.
  - 48.5 In summary, the applicant has satisfied its burden of proof to show compliance with all of the criteria set forth in CCC 11.95.030, as related to the requested variance of the front yard setback.
49. Based upon staff's analysis set forth within the staff report, staff recommended approval of the shoreline variance, riparian variance and front yard variance, subject to recommended Conditions of Approval
50. The open record public hearing after due legal notice was opened on March 6, 2019 and continued to March 20, 2019.
51. The File of Record, Chelan County Department of Community Development Staff Report, and exhibits were received, admitted into the record and considered by the Hearing Examiner.
52. On March 6, 2019, Terry Burnham was allowed to provide public testimony because he would be out of town on the March 20, 2019 continued public hearing date. Mr. Burnham testified that he is a full time resident at Lake Chelan and has resided 11 years at his current home on the lake. Mr. Burnham testified that a structure located 16.5 feet from the Ordinary High Water Mark would impact his uplake views from his property. He testified that he was required to build with the required 25 foot setback. Mr. Burnham produced a site plan which he argued demonstrated that a reasonably sized single family residence could be built on the property without the need for the shoreline or riparian variance. Mr. Burnham submitted his written comments as Exhibit 1 to the hearing.
53. At the March 20, 2019 hearing, the following testimony was received:
- 53.1 Anne Hessburg, of Grette Associates, testified on behalf of the applicant. She testified that she was an agent authorized to appear and speak on behalf of the applicant. Ms. Hessburg indicated that the applicant did not object to any of the proposed conditions of approval. The applicant indicated that prior to the hearing they had not submitted a site plan for the property because they did not know what variances would be granted. However, they did submit a site plan at the hearing showing a proposed residence on the subject property utilizing the variances.
54. The Hearing Examiner had an Exhibit 1 admitted to the record at the March 6, 2019 hearing. At the March 20, 2019 hearing, the Hearing Examiner began with Exhibit 1 when entering exhibits into the record at the March 20, 2019 hearing. The Hearing Examiner at this time is going to change the



numbering of the exhibits admitted into the record at the March 20, 2019 open record public hearing so that the hearing exhibits are consecutively numbered beginning with Exhibit 1 admitted into the record at the March 6, 2019 open record public hearing.

55. Accordingly, the following exhibits were admitted into the record:
- 55.1 Exhibit 1: Terry Burnham's written comments.
  - 55.2 Exhibit 2: Chelan County Assessor record submitted by the applicant.
  - 55.3 Exhibit 3: Sheet 5 of 5 submitted by the applicant.
  - 55.4 Exhibit 4: Prior Hearing Examiner Decisions submitted by the applicant.
  - 55.5 Exhibit 5: Chelan County Shoreline Master Program Appendix submitted by the applicant.
  - 55.6 Exhibit 6: Google Earth aerial photo submitted by the applicant.
  - 55.7 Exhibit 7: Anne Hessburg notes regarding her hearing comments submitted by the applicant.
  - 55.8 Exhibit 8: Assessor records for uplake property submitted by the attorney for Terry Burnham.
56. Appearing and testifying on behalf of the neighboring property owner, Terry Burnham, was attorney Clay Gatens. Mr. Gatens was sworn in as a witness. Mr. Gatens submitted Exhibit 8 into the record. Mr. Gatens testified as to the criteria for a shoreline variance as being a very high standard. He testified that the view from his client's property would be obstructed if the riparian and shoreline variances requested by the applicant were granted.
57. Appearing and testifying from the public was Judy Clark. Ms. Clark testified that she lived above the road that is above the applicant's property. She did not think that the applicant's home would impair her view.
58. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
59. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

## **CONCLUSIONS**

- 1. The Hearing Examiner has authority to render this Decision.
- 2. Referral agency comments were received and considered in the review of this proposal.
- 3. As conditioned, the requested front yard variance is consistent with the criteria set forth in CCC 11.95.030.
- 4. The requested shoreline variance is not consistent with the CCSMP. The common line setback is sufficient to provide relief necessary to the applicant.
- 5. The proposed riparian variance is not consistent with CCC 11.95.030, to the extent it is greater than the common line setback.
- 6. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

## DECISION

1. Based upon the Findings of Fact and Conclusions of Law set forth above, the Hearing Examiner hereby decides as follows:
  - 1.1 The requested front yard variance from 25 feet to 2 feet is hereby Approved;
  - 1.2 The requested riparian variance from 25 feet to 16'5" inches is hereby Denied;
  - 1.3 The requested shoreline variance from 20.75' to 16'5" is hereby Denied.

Dated this 3<sup>rd</sup> day of April, 2019.

CHELAN COUNTY HEARING EXAMINER

  
\_\_\_\_\_  
Andrew L. Kottkamp

**Anyone aggrieved by this decision has twenty-one (21) days from the "date of receipt" as defined by Washington Law to file a petition for review with the Shorelines Hearings Board (for the denial of the shoreline variance permit) as provided for in RCW 90.58.180 and Chapter 461-08 WAC, the rules of practice and procedure of the Shorelines Hearings Board.**

**Anyone aggrieved by this decision (denial of the riparian variance or approval of the zoning variance) has twenty-one days from the issuance of this decision to file an appeal with the Chelan County Superior Court as provided for under Judicial Review of Land Use Decisions, RCW 36.70C.040(3).**

**Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.**

The complete case file, including findings, conclusions, and conditions of approval (if any) is available for inspection during the open office hours at Chelan County Department of Community Development. Their address is 316 Washington Street, Suite 301, Wenatchee, WA 98801. Their telephone number is (509) 667-6225.

---

**THIS SECTION FOR DEPARTMENT OF ECOLOGY USE ONLY IN REGARD TO A  
CONDITIONAL USE AND/OR VARIANCE PERMIT**

Date received by the Department \_\_\_\_\_

Approved \_\_\_\_\_

Denied \_\_\_\_\_

This conditional use/variance permit is approved / denied by the Department pursuant to Chapter 90.58  
RCW.

Development shall be undertaken pursuant to the following additional terms and conditions:

---

---

---

---

---

---

---

---