

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
CUP 2019-003)	DECISION AND CONDITIONS
VAR 2019-002)	OF APPROVAL
AM 2019-001)	
SEARLES)	

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CHELAN COUNTY
COMMUNITY DEVELOPMENT

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on August 7, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

FINDINGS OF FACT

1. The Applicant originally applied for a Conditional Use Permit, Variance and an Administrative Modification and front yard setback variance and a reduction in the Commercial Agricultural setback for a new residence/Guest Inn. The Guest Inn includes five (5) bedrooms and each room will have a private bathroom. There will also be the owner/operator's residence, a swimming pool, hot tub, fire pit and landscaped yard. The applicant is requesting a variance from the front yard setback from 25' from property line/55' from center line of the right-of-way to 15' from property line. The applicant requested an administrative modification to reduce the Commercial Agricultural setback for single family residence.
2. Since the filing of this application, the Applicant has obtained agricultural setback waivers so that a Administrative Modification is no longer required. Additionally, the Applicant has withdrawn their request for a variance.
3. The owners are Keith & Katherine Searles, 9154 122nd Pl SE, Newcastle, WA 98056.
4. The subject site is 244 Swartout Road, Manson, WA.
5. The parcel number for the subject property is 28-22-32-680-265.
6. The subject site is not located within an Urban Growth Area.
7. The property is located within the Commercial Agricultural (AC) zoning district and comprehensive plan designation.
8. The property is currently in residential use.
9. Building permits for this property have been issued per the County Assessor's records:
 - 9.1 BP 050148 30'X36' Garage.
10. The property is moderately sloped with one 1,080 square foot detached garage in the north portion of the property.

11. The property to the north of the subject site is Crimson Lane, a private road and is zoned Commercial Agricultural (AC).
12. The property to the south of the subject site is Swartout Road, a county road and is zoned Commercial Agricultural (AC) and Rural Residential/Resource 5 (RR5).
13. The property to the east of the subject site is zoned Commercial Agricultural (AC).
14. The property to west of the subject site is zoned Commercial Agricultural (AC).
15. The Applicant submitted an Aquifer Recharge Disclosure Form, date stamped February 21, 2019. The property is not located within a wellhead protection area.
16. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does not contain priority habitat.
17. Pursuant to the Federal Emergency Management Agency (FEMA), panel number 5300150225A of the FIRM maps, there is no floodplain on the subject property. Therefore, the provisions of CCC, Chapter 11.84, Frequently Flooded Areas Overlay District and CCC, Chapter 3.20, Flood Hazard Development, do not apply.
18. According to the Chelan County GIS geo hazard and contours layers, the property contains geological hazards for erosive soils. Therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District apply to this project. A geologic assessment is required with building permit submittal.
19. There are no known cultural resource sites on the subject property. Pursuant to Revised Code of Washington (RCW) 27.53.020, if cultural resources are found, the applicant will be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes, and Chelan County Community Development.
20. The Applicant plans to begin construction upon approval and receipt of all necessary permits.
21. According to the site plan of record, dated February 21, 2019, the property is accessed by an existing driveway located off Swartout Road. The existing access approach will need to meet an Industrial/Commercial Driveway approach.
22. Water to the subject property is supplied by the Lake Chelan Reclamation District.
23. Chelan County PUD provides electrical services to the subject property.
24. Sanitation is supplied by Lake Chelan Reclamation District.
25. Noise will be similar to other commercial and agricultural uses in the vicinity. The project must comply with CCC, Chapter 7.35 Noise and RCW 70.107.
26. According to the Site Plan/Landscape Plan date stamped February 21, 2019, visual impacts will be from the existing storage facility.
27. The Notice of Application was referred to surrounding property owners within 300' (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on March 20, 2019 with comments due April 3, 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:

- 27.1 Chelan County Public Works responded on April 2, 2019.
- 27.2 Chelan County Fire Marshal responded on April 1, 2019.
- 27.3 Chelan County Fire District #5 responded on April 4, 2019.
- 27.4 Manson Community Council responded on April 2, 2019.
- 27.5 Chelan-Douglas Health District responded on March 25, 2019.
28. The following agencies were notified but did not respond:
 - 28.1 Chelan County PUD
 - 28.2 Dept of Archaeology & Historic Preservation
 - 28.3 Confederated Tribes of Colville
 - 28.4 Yakama Nation
 - 28.5 Department of Ecology
29. Public Comments:
 - 29.1 John G. Snyder, received March 26, 2019.
 - 29.2 Robin Werner, received April 3, 2019.
30. A Determination of Completeness was issued on March 11, 2019.
31. The Notice of application was provided on March 19, 2019.
32. The Notice of Public Hearing was provided on May 24, 2019.
33. Chelan County Code (CCC) 11.30.020(6)(C) states, in relevant part, “agricultural setbacks for **dwelling units** may be waived on an existing parcel within or adjacent to the commercial agricultural zoning district when a waiver, signed by both the subject property owner and the adjacent property owner, is notarized, reviewed and approved by the Department and recorded with the Chelan County Auditor’s office (resulting in a notice to title).” (**emphasis added**).
34. Pursuant to the strict terms of the above referenced Code, waivers only apply to setbacks for dwelling units.
35. The Chelan County Code (CCC) defines a Dwelling Unit as “...one or more rooms designed, occupied or intended for occupancy as a separate living quarters with sleeping, sanitary facilities and kitchen facilities provided within the dwelling unit for the exclusive use of a single household.” CCC 14.98.625. (**emphasis added**).
36. The Chelan County Code (CCC) defines a Guest Inn as “...a facility with one (1) kitchen, a shared dining area, with not more than a total of six (6) lodging units, which are available within a single-family residence and/or cabin outbuildings providing short term lodging for paying guests.” (**emphasis added**).
37. The Hearing Examiner finds that it is significant that the definition of Guest Inn references “lodging units” while the application for agricultural setbacks reference “dwelling units.”
38. A “lodging unit” is defined in the Chelan County Code as “...one self-contained unit designed by a number, letter or some other method of identification.” CCC 14.98.1110.
39. The issue is whether a “lodging unit,” can also be a “dwelling unit.”

40. The other issue for consideration is that a "Guest Inn" as defined by the Chelan County Code clearly indicates that the lodging units can be contained within a single-family residence.
41. The Hearing Examiner finds that for the purposes of the definition of a Guest Inn, that a "lodging unit" is more specific and a "dwelling unit" is more general and that a "lodging unit" may also be considered a "dwelling unit."
42. "Household" and "single-household" are not defined by the Chelan County Code, Chapter 14.98.
43. "Single-family residence" is not defined by the Chelan County Code in Chapter 14.98.
44. The Hearing Examiner's finding that the definition of "lodging unit" is included in the broader term "dwelling unit" is specific to this decision and this decision only. The Hearing Examiner, while being somewhat uncomfortable with this finding, finds that it is, in this particular case, consistent with the facts presented before the Hearing Examiner.
45. The project is consistent with Chelan County Code (CCC) Section 11.40.020 in the following respects:
 - 45.1 Guest Inns are permitted with an approved Conditional Use Permit (CUP) in the AC zoning district.
46. The project is consistent with CCC Section 11.93.040(1) in the following respects:
 - 46.1 Based on review of the application materials submitted, the criteria for the Guest Inn, can be satisfied.
47. The project is consistent with CCC Section 11.93.040 (2) in the following respects:
 - 47.1 The applicant has submitted a site plan, date stamped February 21, 2019, showing proposed uses and indicating the planned setbacks.
 - 47.2 Based on the most recent site plan of record, the proposed development does meet the development standards.
48. The project is consistent with CCC Section 11.93.040(3) in the following respects:
 - 48.1 The applicant is proposing to build an approximately 6,000-7,000 square foot single family residence to be used as a commercial business, surrounding uses include single family residences and orchards.
 - 48.2 As conditioned, the use of the property as a Guest Inn is compatible with the surrounding land uses.
49. The project is consistent with CCC Section 11.93.040(4) in the following respects:
 - 49.1 The applicant has submitted a geologic assessment, dated March 22, 2018, addressing possible erodible soils on the property and will be reviewed at time of building permit submittal. There are no identified/protected habitat areas, streams, flood plain or wetlands identified on the property.
 - 49.2 The proposed development, as conditioned, is not detrimental to the environment.
50. The project is consistent with CCC Section 11.93.040(5)(B) in the following respects:
 - 50.1 Chelan County provided a Notice of Application to all providers. Comments are included in the file of record and summarized above.
 - 50.2 The subject property has adequate services to accommodate the proposed use.

51. The project is consistent with CCC Section 11.93.040(6) in the following respects:
- 51.1 The proposed structures must meet all applicable regulations for public health and safety, in accordance with permitting regulations.
 - 51.2 The proposed use, as conditioned, will not have an adverse impact on public health, safety and welfare.
52. The project is consistent with CCC Section 11.93.040(7) in the following respects:
- 52.1 **Roads, ingress and egress:** The property is primarily served by an existing driveway access off Swartout Road, a 40-foot wide county road.
 - 52.2 **Stormwater:** Stormwater requirements would be addressed at the time of building permit review. Compliance with CCC, Chapter 13.16, Chelan County Stormwater Guidelines, will apply. See Chelan County Public Works Comments, dated April 2, 2019.
 - 52.3 **Parking and Loading:** The project narrative indicates the proposal would have five (5) parking spaces, in addition to the required two (2) parking spaces for the single family residence.
 - 52.4 **Domestic Water:** Proposed Guest Inn would be served by Lake Chelan Reclamation District.
 - 52.5 **Sanitary Facilities:** Proposed Guest Inn would be served by Lake Chelan Reclamation District.
 - 52.6 **Power:** Power is provided by Chelan County PUD.
 - 52.7 **Fire Protection:** Fire flow shall be mitigated with fire sprinklers.
 - 52.8 As conditioned, all necessary facilities, improvements and services are consistent with the requirements of Titles 11, 13 and 15 of the Chelan County Code.
53. The project is consistent with CCC Section 11.93.040(8) in the following respects:
- 53.1 **Noise and Vibration:** Compliance with CCC, Section 7.35 and RCW 70.107 regarding noise control. Staff recommended a condition of approval to follow these sections.
 - 53.2 **Light and Glare:** Light and glare is regulated by CCC, Section 11.88.080, all exterior lighting provided to illuminate off-street parking or loading areas must be directed and shielded to prevent illuminating surrounding residential uses. Staff recommended a condition of approval to follow these sections.
 - 53.3 **Heat, Steam, Odors, Smoke and Dust:** The application materials and proposed uses do not indicate heat, steam, odors, smoke or dust will be an issue.
 - 53.4 **Vibration and Electrical disturbance:** This type of development should not result in vibration or electrical disturbance.
 - 53.5 Based on the above facts, noise, light, heat, steam, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties can be avoided or mitigated, with the recommended conditions of approval.
54. The project is consistent with CCC Section 11.93.040(9) in the following respects:

- 54.1 The Chelan County Comprehensive Plan provides for recreation and intensification of proposed and existing development designed not to serve existing and projected rural populations, but support recreation and tourist uses.
- 54.2 The proposed Guest Inn, with the recommended conditions, is intended as a recreation and tourist use
- 55. The project is consistent with CCC Section 11.93.040(10) in the following respects:
 - 55.1 Proposed conditions are Chelan County Code requirements. Failure to comply with the conditions may result in the inability to obtain building permit(s) and/or may result in code violations subject to Title 16
 - 55.2 Proposed conditions are measureable and can be enforced.
- 56. The project is consistent with CCC Section 11.93.170(1) in the following respects:
 - 56.1 The proposed Guest Inn shall meet all applicable health, fire safety and building codes. The facility shall not infringe upon the right of neighboring residents to peaceful occupancy of their homes.
 - 56.2 The proposed structure shall meet all building and fire codes and are reviewed at the time of building permit submittal.
- 57. The project is consistent with CCC Section 11.93.170(2) in the following respects:
 - 57.1 The application indicated the Guest Inn is the proposed primary residence of the owner/operator.
 - 57.2 This code provision has been met.
- 58. The project is consistent with CCC Section 11.93.170(3) in the following respects:
 - 58.1 The applicant has indicated the desire to have one non-illuminated sign for the proposed Guest Inn facility.
 - 58.2 The applicant must obtain a building permit and meet all zoning codes prior to issuance of building permit for desired sign.
- 59. The project is consistent with CCC Section 11.93.170 (4) in the following respects:
 - 59.1 The application indicates the driveway accessing the proposed Guest Inn would be greater than one hundred fifty feet (150') in length with a width of at least twelve feet (12') to facilitate the passage of two (2) vehicles traveling in opposite directions.
 - 59.2 This code provision shall be met though condition of approval.
- 60. The project is consistent with CCC Section 11.93.170(5) in the following respects:
 - 60.1 The application indicates the proposed Guest Inn would have one off-street parking space per unit, in addition to the residential parking requirements.
 - 60.2 The code provision shall be met though a condition of approval and reviewed by public works during building permit review.
- 61. The project is consistent with CCC Section 11.93.170(6) in the following respects:
 - 61.1 This application is requesting a five (5) bedroom with an attached bathroom, which includes caretaker's quarters, pool, hot tube and a fire pit; cabins or guest accommodations are not proposed.

- 61.2 The project, as identified in the application, has no plan for any additional cabins or guest accommodations, therefore this provision does not apply.
62. An open record public hearing after due legal notice was held on August 7, 2019.
63. The entire file of record was admitted into the record at this open record public hearing.
64. Appearing and testifying on behalf of the applicant was Keith Searles. Mr. Searles testified that he was the Applicant and property owner. Mr. Searles confirmed that all variance applications and administrative modifications have been withdrawn. Mr. Searles indicated that the Applicant had no objection to any of the proposed conditions of approval.
65. Testifying from the public was:
- 65.1 Kris Sather. Ms. Sather indicated that she is a member of an entity that owns property zoned commercial agriculture, but that it is not adjacent to the Applicant's property. She indicated that they had not signed a setback waiver and that they would not sign a setback waiver.
- 65.2 On questioning by the Hearing Examiner, staff indicated that the requirement for a setback waiver only applied to property zoned commercial agriculture that is directly adjacent to the subject parcel. Property zoned commercial agriculture that is within 100 feet of the subject property but is divided by a parcel in separate ownership that is also zoned commercial agriculture, is not required to sign a waiver in order to receive the agricultural setback waiver.
66. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
67. 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 subject proposal is consistent with the Chelan County Code, Title 11.
4. Environmental and Critical Areas review has been completed. As conditioned, the proposal does not have negative impacts on critical areas which cannot be mitigated.
5. The Applicant has validly withdrawn the applications for a variance and for an administrative modification.
6. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

DECISION

Based upon the above noted Findings and Fact and Conclusions, Conditional Use CUP 2019-003 is hereby APPROVED. VAR 2019-002 and AM 2019-001 have been withdrawn by the Applicant and therefore no decision is required.

CONDITIONS OF APPROVAL

All conditions imposed by this decision shall be binding on the applicant, which includes the owner or owners of the properties, heirs, assigns, and successors.

1. Pursuant to CCC, Section 11.93.070, in any case where a conditional use permit 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 the Chelan County Code.
2. Pursuant to CCC, Section 11.93.080, the granting of a conditional use permit and the conditions set forth runs with the land; compliance with the conditional use permit is the responsibility of the current owner of the property, whether that is the applicant or a successor.
3. Pursuant to RCW 27.53.020, if the applicants or their agents discover previously unknown historic or archeological 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.
4. All conditions of approval for CUP 2019-001 shall be completed prior to final certificate of occupancy for the commercial building permit and commencement of proposed activity.
5. The subject property and conditional use permit shall conform to the comments and conditions of the approval as found in the Chelan County Fire Marshal Comment response dated April 1, 2019.
6. The subject property and conditional use permit shall conform to the comments and conditions of the approval as found in the Chelan County Public Works Agency Comment response dated April 2, 2019.
7. Pursuant to Chelan County Code Section 11.93.040(8) and Chapter 7.35, the applicant shall ensure that all noise regulations are met.
8. Pursuant to Chelan County Code Section 11.88.080, security lights or any exterior lighting shall be low-intensity, non-flashing and designed to project toward the property or shall be shielded to keep light from directly projecting over property lines.
9. Pursuant to Chelan County Code Section 11.93.170, the property owners shall be present at all times the Guest Inn is occupied by guests.
10. Pursuant to Chelan County Code Section 11.93.170(2), the Guest Inn shall be the principal residence of the owner/operator.
11. Pursuant to Chelan County Code Section 11.93.170(3) and 11.93.030, the applicant may place one non-illuminated sign no larger than four feet, meeting all setback requirements.
12. Pursuant to Chelan County Code Section 11.93.170(5), the applicant is required to provide two off street parking spaces of the existing residence and one off-street parking space per unit for a total of seven (7).
13. Pursuant to Chelan County Code Section 11.86.070, a geologic site assessment shall be submitted at time of building permit submittal.
14. Prior to building permit issuance, the applicant shall obtain Commercial Agriculture wavier from neighboring properties to adjust the 100 foot setback. If the applicant is unable to obtain the wavier a variance may be submitted.
15. Pursuant to Chelan County Code, Section 11.93.090, upon final action of the hearing examiner to deny an application for a conditional use permit, the department shall not accept filing of an

application for substantially the same matter within one year from the date of the final denial of the application.

16. Pursuant to Chelan County Code, Section 11.93.110, a conditional use permit shall become void if not acted upon, including but not limited to submitting a building permit or the placement of all infrastructure, within three years after approval or such other time period as established by the hearing examiner. The applicant may request a one-year extension, to be reviewed administratively, if the applicant submits a written request with community development thirty days prior to expiration.
17. Pursuant to Chelan County Code, Section 11.93.120, action of the Hearing Examiner is final, unless appealed pursuant to the judicial appeal provisions of Title 14 of the Chelan County Code.

Approved this 13th day of August, 2019.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Chelan 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.

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.