

DEC 11 2019

## BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

CHELAN COUNTY

IN THE MATTER OF )

FINDINGS OF FACT, COMMUNITY DEVELOPMENT

RipV 2019-006/WV2019-002 )

CONCLUSIONS OF LAW,

Baughman/Lynch )

DECISION AND CONDITIONS

)

OF APPROVAL

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on December 4, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

**I. FINDINGS OF FACT**

1. These applications for a riparian and wetland variance were submitted to reduce the required riparian setbacks and wetland buffer for the construction of a residence and septic system. The riparian variance is to reduce the 100 ft. riparian setback to 5 ft. from the ordinary high water mark (OHWM) of an Np-typed stream. The wetland variance is to reduce the 200 ft. buffer for a category I wetland to a 5 ft. to 8 ft. buffer. The proposed residence is to be approximately 1,645 sq. ft. 800 sq. ft. of mitigation plantings are proposed with application.
2. The applicants are Sarah Baughman and Bryan Crossley, 60272 Winnebago Lane, Bend, OR 97702 and Terrence Lynch, 9706 4th Ave NE, Suite 320, Seattle, WA 98115.
3. The agent for applicants is Ryan Walker, Grette Associates, LLC., 15 N. Worthen St., Suite 101, Wenatchee, WA 98801.
4. The project location is 18207 and NNA Dardanells Rd., Leavenworth, WA 98826. The scope of the project will mainly be taking place on 18207 Dardanells Rd. The improvement to NNA Dardanells Rd. is solely the proposed septic tank.
5. The parcel numbers for the subject properties are 26-16-11-240-200 and 26-16-11-230-050.
6. The legal descriptions and size for the subject properties are: 1. A portion of the E 1/2 of the NW 1/4 of Section 11, Township 26 N., Range 16 E.W.M; the property is approximately 6.02 acres.  
2. A portion of the NW 1/4 of Section 11, Township 26 N, range 16 E.W.M; the property is approximately 6.20 acres.
7. The project is not located in an Urban Growth Area.
8. The Comprehensive Plan designation and zoning for the subject properties is Rural Residential/Resource 10 (RR10).
9. The projects sites are currently in residential and recreational use. No previous permits or applications were on file with Chelan County for either site.
10. The project sites are heavily forested and are consumed with a Category 1 wetland boundary and buffer. The subject property also contains a perennial non-fish bearing (Np type) stream.
11. The property to the north of the subject property is Burlington Northern Railroad and is zoned RR10.
12. The property to the south of the subject property is RR10 zoning and is undeveloped.

13. The property to the east of the subject property is RR10 zoning and is undeveloped.
14. The property to west of the subject property is RR10 zoning and is in residential and recreational use.
15. The Aquifer Recharge form was completed with the variance application. Pursuant to Chelan County Code (CCC), Section 11.82.060(2)(A), residential dwelling units and their accessory uses are exempt from the aquifer recharge area regulations under this chapter.
16. Although the category I wetland is located within shoreline jurisdiction of Nason Creek, a shoreline of statewide significance that holds a 'conservancy' shoreline environment designation, the buffer is regulated by the Critical Areas Ordinance of Chelan County Title 11. Therefore, the regulations of the Chelan County SMP do not apply to the proposed variances.
17. According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the project sites contain Mule Deer and Aspen Stands, both WDFW Class II Priority Habitat Species. Therefore the provisions of CCC 11.78 as it relates to Class II habitat would apply.
18. Pursuant to the Washington State Department of Natural Resources FPARS stream typing map, streams were indicated on the subject property. The report concluded that the stream running along the western edge of the subject property is designated as a perennial non-fish (Np) bearing stream. Therefore, the provisions of CCC 11.78 for riparian areas, would apply.
19. The project sites contain a category I wetland. Therefore, the provisions of CCC 11.80 would apply.
20. According to the Federal Emergency Management Agency, FIRM panel # 5300150775B, there is indication of flooding on the project sites. Therefore, the provisions of CCC 11.84 and 3.20 would apply.
21. A Floodplain Development Permit is required per Chelan County Building Division.
22. The County GIS data map does not indicate there to be known geologically hazardous conditions on the subject property.
23. However, pursuant to CCC 11.86.020(3), the risk of hazard is unknown and the subject properties may be potentially unstable due to groundwater seepage and springs. The administrator may require a geologic site assessment and/or geotechnical report to determine the actual presence or absence of a geologically hazardous area. Therefore, staff recommended as a condition of approval, that the applicant is required to submit a geological site assessment with building permit application.
24. There are no known cultural resources on the project locations. Pursuant to the CCSMP Section 27 and RCW 27.53.020, if the applicants, 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 stop work and notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.
25. Construction will begin upon issuance of all necessary permits and within the appropriate work window.
26. The subject property is accessed off of West Dardanells Rd., a private road.
27. The subject property is served by an existing private well.
28. Power is provided by Chelan County PUD No. 1.
29. The subject property currently does not have a septic system. However, if approved, this variance would allow for the placement of an on-site septic system on site #2.

30. The project location is located within the boundaries of Fire District #9.
31. Noise from construction, typically associated with a single-family residence. Construction noise is regulated by CCC, Section 11.88.190, which states no construction activity shall be permitted within one thousand feet of an occupied residence between the hours of ten pm to seven am.
32. Due to the natural vegetation and topography, visual impacts are anticipated to be minimal.
33. 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 October 4, 2019 with comments due October 18, 2019. The following agencies were notified but no comments were provided:
  - 33.1 Chelan County Building Official
  - 33.2 Chelan-Douglas Health District
  - 33.3 WA Department of Natural Resources
  - 33.4 WA Department of Ecology
  - 33.5 WA State Department of Fish & Wildlife
  - 33.6 US Department of Fish & Wildlife
  - 33.7 Department of Archaeology & Historic Preservation
  - 33.8 Yakama Nation
  - 33.9 Confederated Tribes of the Colville Reservation
  - 33.10 Chelan County Natural Resources
34. No public comments were received.
35. The application materials were submitted on August 26, 2019.
36. A Determination of Completeness was issued on September 24, 2019.
37. The Notice of Application was provided on October 4, 2019.
38. The Notice of Public Hearing was provided on November 22, 2019.
39. Pursuant to WAC 197.11.800(6)(b), variance applications that do not result in an increase in density are categorically exempt from the environmental review process.
40. The Comprehensive Plan has been reviewed. Specifically the goals and policies related to the Rural Residential/Resource 10 (RR10) Comprehensive Plan designation and Critical Areas, for consistency with the proposed residential development. The Hearing Examiner finds that the project, as conditioned, is consistent with the Comprehensive Plan.
41. The project is consistent with Chelan County Code (CCC) 11.10.020 (1) in the following respects:
  - 41.1 The applicant is not requesting to modify the lot size.
  - 41.2 This requirement does not apply.
42. The project is consistent with CCC 11.10.020 (2) in the following respects:
  - 42.1 The lot exceeds 150 ft. at the front building line.
  - 42.2 The lot complies with the required building width.
43. The project is consistent with CCC 11.10.020 (3) in the following respects:
  - 43.1 Building height would be calculated during building permit review.
  - 43.2 Building height would be determined during review of the building permit application. As conditioned, the proposed residence will not exceed 35 feet.

- 44. The project is consistent with CCC 11.10.020 (4) in the following respects:
  - 44.1 According to Chelan County Assessor's records, the property is 6.02 acres, this would allow for over 90,000 sq. ft. of lot coverage. According to the agent's calculations, provided via email on September 24, 2019, the total lot coverage upon completion of the project would be approximately 1,645 sq. ft.
  - 44.2 The project meets the requirement for maximum lot coverage.
- 45. The project is consistent with CCC 11.10.020 (5) in the following respects:
  - 45.1 As indicated on the site plan of record, the proposed residence would meet the applicable zoning setbacks.
  - 45.2 The proposed residence would meet the minimum setbacks.
- 46. The project is consistent with CCC 11.10.020 (6) in the following respects:
  - 46.1 Based on the site plan of record, a driveway is proposed for the residence.
  - 46.2 The proposed driveway location would satisfy the off-street parking requirement.
- 47. The project is consistent with CCC 11.95.030 (1)(A) in the following respects:
  - 47.1 The proposed residence is similar in size and appears to be compatible with other structures in proximity to the project location.
  - 47.2 The applicant's project is similar to the residential development on the surrounding properties. The variance is necessary to preserve a right substantially the same as possessed by owners within the same area and would not grant special privilege.
- 48. The project is consistent with CCC 11.95.030 (1)(B) in the following respects:
  - 48.1 Due to the sloping topography of the subject properties, the category I wetland has expanded over time, leaving very little upland area that could be suitable for development. The wetland has reconnected to Nason Creek via side channels, including the type Np stream.
  - 48.2 The variance request is based on the presence of critical areas that are located on and adjacent to the subject properties which the applicant has no control over.
- 49. The project is consistent with CCC 11.95.030 (1)(C) in the following respects:
  - 49.1 The hardship asserted by the owners appears to not be of their own actions. The hardship stems from the application of the critical areas as outlined in Chelan County Title 11, this includes the location of the category I wetland and its associated 200 ft. protective buffer.
  - 49.2 Additionally, the lot configuration was created prior to the adoption of the critical areas as they currently apply.
  - 49.3 The hardship does not appear to be of the owners' actions.
- 50. The project is consistent with CCC 11.95.030 (1)(D) in the following respects:
  - 50.1 The proposal is to create a building envelope for a single family residence. The on-site septic drainfield is proposed to be placed outside of the riparian buffer and is to be placed a minimum of 100 ft. from the edge of the wetland.

- 50.2 The proposed residence would be required to meet building code requirements and as proposed, would meet the required setbacks from property lines pursuant to the CCC 11.10.020.
- 50.3 The proposal satisfies the objectives of the comprehensive plan for the RW zone and critical areas. The proposal will not be materially detrimental to the public welfare and safety or injurious to property in the neighborhood.
- 51. The project is consistent with CCC 11.95.030 (1)(E) in the following respects:
  - 51.1 Based on Warranty Fulfillment Deed, dated May 30, 1986 under AFN: 8605300030, the current lot configuration was created prior to the establishment of critical areas regulations pursuant to Title 11 zoning.
  - 51.2 The presence of the wetland with the associated buffer as well as the stream with protective buffer covers the entirety of the subject property that is proposed to be developed residentially.
  - 51.3 The hardship is a result of the application of CCC Title 11 to the subject property, which does not factor in historically created lots prior to critical areas.
- 52. The project is consistent with CCC 11.95.030 (3)(A) in the following respects:
  - 52.1 The variance request is based on the property's encumbrances due to the application of the Title 11 critical areas for riparian areas and wetlands. The parcel was legally established pursuant to CCC 14.98.1090 definition of legal lot of record being as it was created prior to October 17, 2000.
  - 52.2 The project, as proposed, would conform to Chelan County building codes and setback requirements associated with the RR10 zoning. The hardship stems from the required critical area buffers.
  - 52.3 The proposed variance is based on the application of the Chelan County critical areas ordinance of Title 11 as it relates to the associated riparian and wetland buffers.
- 53. The project is consistent with CCC 11.95.030 (3)(B) in the following respects:
  - 53.1 Currently, the subject property does not contain structures. The residence is proposed to be less than 1,700 sq. ft. total. The applicant indicates that the request is not based on economic return, but rather a reasonable use of the property in way similar to properties in the proximity.
  - 53.2 There is no claim of economic return. The reduced buffer would provide a building area for a residence.
- 54. The project is consistent with CCC 11.95.030 (3)(C) in the following respects:
  - 54.1 The owners acquired the property on October 10, 2007. The lot was legally created in 1986 or earlier based on recorded deeds, prior to the establishment of critical areas regulations.
  - 54.2 The lot encumbrances existed at the time the applicant acquired the property; however the lot was legally created as a residential lot prior to the county's adoption of zoning codes and critical areas regulations.
- 55. The project is consistent with CCC 11.95.030 (3)(D) in the following respects:
  - 55.1 The proposed variance does not change the permitted land uses.
  - 55.2 This does not apply.

56. The project is consistent with CCC 11.95.030 (3)(E) in the following respects:
- 56.1 The proposed variance does not affect density.
  - 56.2 This does not apply.
57. The project is consistent with CCC 11.78.230 (2)(A) in the following respects:
- 57.1 With application, the applicant is proposing mitigation with monitoring by installing 800 sq. ft. of native vegetation plantings adjacent to the Category I wetland. The plantings would re-vegetate an area of the property which has been historically modified and dominated by lawn grass. The installation of mitigation planting could alleviate potential impacts to the wetland buffer and would enhance the buffer habitat and associated functions.
  - 57.2 The project, as conditioned, will not result in significant impacts to fish and wildlife.
58. The project is consistent with CCC 11.78.230 (2)(B) in the following respects:
- 58.1 Due to the critical areas as well as the location of the existing Dardenells Road, the upland portion of the property is burdened by multiple constraints.
  - 58.2 In order to allow for a reasonable use of the property, via residential development, it is difficult to avoid all potential impacts to the wetland buffer as the buffer expands beyond the subject property. However, no wetland vegetation disturbance will result from the installation of the septic system. Additionally as mentioned, mitigation planting is proposed as a way to potentially alleviate impacts associated with residential development; the planting is designed with multiple canopy layers and would enhance the already existing micro-climates present on the property.
  - 58.3 The proposed residence is moderate in size and has been designed to reduce impacts to critical areas as much as possible. Any other location on the site would require vegetation removal and closer proximity to the OHWM due to the existing onsite vegetation.
59. The project is consistent with CCC 11.78.230 (2)(C) in the following respects:
- 59.1 Based on the applicant's narrative, the proposed development has been designed to avoid the wetland, stream, and their associated buffers to the greatest extent possible. The residence is to be located as far as feasible from the wetland and stream while still conforming to the setbacks as required by CCC 11.10.020.
  - 59.2 Staff found, as conditioned, the proposed mitigation would offset impacts to fish and wildlife habitat.
60. The project is consistent with CCC 11.80.120(2)(A) in the following respects:
- 60.1 Based on an email from the applicant, dated November 20, 2019 (Exhibit A), the project was reviewed for the actual impact to the buffer and site specific determinations were made regarding the improvements proposed to the buffer function.
  - 60.2 Being as the subject property has a historically cleared area, the impact is anticipated to be minimal and able to be mitigated through the planting of the 800 sq. ft. area.
  - 60.3 The potential impact to the wetland and wetland buffer was assessed via the application materials, wetland delineation, and mitigation planting plan. Staff finds, as conditioned, that the potential impacts to the wetland and associated wetland buffer could be mitigated.
61. The project is consistent with CCC 11.80.120(2)(B) in the following respects:

- 61.1 Based on the application materials and site plan of record, the proposed residence and septic system appear to be designed in a manner that avoids significant impacts to the wetland and associated buffer to the greatest extent possible.
- 61.2 The Hearing Examiner finds, as conditioned, that the proposed development would result in a minimal impact to the wetland and associated buffer while allowing reasonable use of the subject property.
- 62. The project is consistent with CCC 11.80.120(2)(C) in the following respects:
  - 62.1 As previously states, the project appears to be designed in a manner that would avoid significant impacts to the wetland and associated buffer to the greatest extent possible. The proposed mitigation plantings would enhance the function of the wetland by revegetating an area that had been historically disturbed.
  - 62.2 The Hearing Examiner finds, as conditioned, the proposed development would be designed in a manner to avoid significant impacts to the wetlands and associated buffer.
- 63. The proposed variances to reduce the associated riparian and wetland buffers is not anticipated to constitute the granting of a special privilege as other properties in close proximity are developed residentially. Due to the application of the critical areas ordinance of Title 11, the subject property is entirely encumbered by protective buffers associated with the wetland as well as the stream present on site. The proposed mitigation plantings are anticipated to alleviate potential impacts that could be associated with the proposed residential development. The area to be planted with these mitigation plantings were historically cleared and would therefore improve the function of the expanding wetlands and associated buffer.
- 64. Staff reviewed the applications and submitted materials. Based on the information contained in the applications and compliance with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code, staff recommended **APPROVAL** subject to the Recommended Conditions of Approval.
- 65. 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.
- 66. An open record public hearing after legal notice was provided was held on December 4, 2019.
- 67. Ryan Walker appeared and testified on behalf of the applicant. Mr. Walker testified that he was the agent authorized to appear and speak on behalf of the property owners. Mr. Walker testified that there is no use of the property possible without these variances. Mr. Walker testified that all the proposed Conditions of Approval were acceptable. However, Mr. Walker did ask that Condition No. 4 be modified so that the requirement for a floodplain development permit be only required if the building site is within the floodplain.
- 68. No member of the public testified at this hearing.
- 69. Staff indicated the proposed change to proposed Condition of Approval No. 4, as suggested by the applicant, was acceptable provided that a licensed surveyor submit a report regarding whether the building site is within, or outside of, the floodplain.
- 70. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
- 71. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

## II. 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 described, the proposal is consistent with the Chelan County Comprehensive Plan.
4. As conditioned, the subject proposal is consistent with the Chelan County Code, Title 11.
5. Environmental and Critical Areas review has been completed. As conditioned, the proposal does not have negative impacts on critical areas which cannot be mitigated.
6. The authorization of the permits will not be materially detrimental to the purposes of the Revised Code of Washington, the Washington Administrative Code, the Chelan County Shoreline Master Program, the Chelan County Comprehensive Plan, the Chelan County, or not be otherwise detrimental to the public interest.
7. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

## III. DECISION

Based upon the above noted Findings and Fact and Conclusions, RipV 2019-006 and WV 2019-002 are hereby **APPROVED**, subject to the conditions noted below.

## IV. 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 11.95.040, the construction shall be in substantial conformance with the site plan of record, dated August 26, 2019.
2. Pursuant to CCC 11.95.040 and the International Building Code, Section 105, the applicant shall obtain a building permit for the construction of the residence.
3. Pursuant to CCC 11.86, a geologic site assessment is required. The applicant is required to comply with any recommendations identified within this report. The assessment shall be submitted to Chelan County Community Development with building permit submittal.
4. Pursuant to CCC 3.20 & CCC 11.84, a floodplain development permit shall be required prior to or with submittal of a residential building permit to Chelan County Community Development, if it is determined, by a licensed surveyor, that the building site is located within the floodplain. If a licensed surveyor submits a written report that the building site outside of the floodplain, no floodplain development shall be required.
5. Pursuant to CCC 11.78.100 & CCC 11.80.110, prior to building permit submittal, the applicant shall submit a habitat management and mitigation plan, in compliance with the recommendations of the WA State Dept. of Fish and Wildlife (WDFW) and WA State Dept. of Ecology. This mitigation plan shall be reviewed and approved by Chelan County Community Development and WDFW prior to issuance of a building permit.



- 5.1. The approved mitigation plantings shall be installed prior to final occupancy of the proposed residence. Bonding in conformance with CCC 14.16 may be utilized if plantings are unable to be planted prior to final occupancy.
6. Pursuant to CCC 11.78.090(3), 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 11.80.050(3), the location of the outer extent of the wetland buffer, the wetland boundary and the areas to be disturbed shall be marked in the field, and such field markings shall be approved by the administrator prior to the commencement of permitted activities. The location of these areas shall be clearly identified on the site plan. Such field markings shall be maintained throughout the duration of the permit.
  8. Pursuant to CCC 11.80.060(4), all wetland buffer areas shall be temporarily fenced between the construction activity and the buffer area with a highly visible and durable protective barrier(s) during construction to prevent access and sedimentation from disturbed areas from entering the wetland or its buffer. This requirement may be waived by the administrator if an alternative to fencing which achieves the same objective is proposed and approved.
  9. Pursuant to CCC 11.88.190, no construction activity shall be permitted within 1,000 ft. of an occupied residence between the hours of 10 p.m. to 7 a.m.
  10. Pursuant to RCW 27.53.020, if the applicant or his agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/agent shall immediately stop work and notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.
  11. Pursuant to CCC 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.
  12. Pursuant to CCC 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.
  13. Pursuant to CCC 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 an application for substantially the same matter within one year from the date of the final denial of the application.
  14. Pursuant to CCC 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.

Approved this 11th day of December, 2019.

CHELAN COUNTY HEARING EXAMINER



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ANDREW L. KOTTKAMP

**Anyone aggrieved by this decision 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.