

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

RECEIVED

IN THE MATTER OF )

VAR 2018-416 )

BEEBE )

CHELAN COUNTY )

COMMUNITY DEVELOPMENT )

FINDINGS OF FACT,  
CONCLUSIONS, DECISION  
AND CONDITIONS OF  
APPROVAL

THIS MATTER, having come on before the Chelan County Hearing Examiner on February 13, 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. An application for a variance proposes to vary the rear yard fence height to a maximum of 9 feet from the required 6 feet in the rear yard area. Due to sloping topography, the fence is to provide privacy from the neighboring rear property.
2. The owners are Robert & Julie Beebe.
3. The project location is 48 Willow Point Road, Manson, WA 98831.
4. The parcel number of the subject property is 28-21-27-925-150.
5. The legal description of the subject property is Lot 30-B of Short Plat No. 1998-005 recorded May 25, 1999 under AFN 2053765.
6. This matter is within the Manson urban growth area (UGA).
7. The Comprehensive Plan designation and zoning is Urban Residential-2 (UR2).
8. The subject property currently has an existing residence, swimming pool, and detached garage with loft.
9. The subject property terraces south creating a bench where the existing residence and swimming pool are located. The adjacent property to the north sits approximately 4 feet higher in elevation than the subject property.
10. The property to the north is Urban Residential-2 (UR2).
11. The property to the south is Willow Point Road, public road.
12. The property to the east is Urban Residential-2 (UR2).
13. The property to the west is Urban Residential-2 (UR2).
14. The property is exempt from aquifer recharge area disclosure form per Section 11.82.060(2)(A).
15. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species Maps, no known habitat is identified on the subject property; therefore, the provision of Chelan County Code Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.
16. Pursuant to the Federal Emergency Management Agency, panel # 5300150225A of the FIRM maps, there is no floodplain on the subject property; therefore, the provisions of Chelan County Code

Chapters 11.84 Frequently Flooded Areas Overlay District and CCC 3.20 Flood Hazard Development do not apply.

17. Pursuant to Chelan County Code Chapter 11.86, the subject site does contain geological hazards on a corner of the property. However, the proposed fence is outside of the identified erosions area; per Dave Kuhl, Director of Community Development, a geological site assessment is not necessary for the construction of the fence.
18. Pursuant to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property does not contain a wetland area; therefore, the provisions of Chelan County Code Chapter 11.80 Wetland Areas Overlay District do not apply.
19. Based on comment letter from the Confederated Tribes of Colville (dated January 3, 2019), the proposed project area is within the immediate area of cultural resources and/or archaeological sites.
20. Pursuant to WAC 197.11.800(6)(b), variance requests that do not result in an increase in density are categorically exempt from the environmental review process.
21. The Comprehensive Plan Appendix F for the Manson Subarea has been reviewed; specifically, the goals and policies related to the Urban Residential-2 (UR2) zone for consistency with the proposed project which permits residential uses. Staff found that the project, as conditioned, is consistent with the Comprehensive Plan.
22. Construction will begin upon issuance of building permit.
23. The subject property is accessed directly from Willow Point Road, a public road.
24. Power is provided by the PUD.
25. The property is located within the Chelan County Fire District No. 5.
26. The use of property is not changing and the proposed fence structure is an appurtenance to a residential use.
27. Once the fence is constructed to a maximum of 9 feet, the neighboring parcel will see approximately 6 feet of the fence due to the differences in elevation.
28. The Notice of Application was referred to surrounding property owners within 300 feet (excluding 60 feet of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on January 3, 2019 with comments due January 17, 2019. The following agencies provided comments:
  - 28.1 Chelan County Fire Marshal responded on January 16, 2019
  - 28.2 Chelan County Fire District #5 responded on January 16, 2019
  - 28.3 Manson Community Council responded on January 17, 2019
  - 28.4 Confederated Tribes of Colville responded on January 3, 2019
29. The following agencies were notified but did not respond:
  - 29.1 Chelan County Building Official
  - 29.2 WA State Department of Archaeology and Historic Preservation
  - 29.3 Yakama Nation
30. No comment letters were received.
31. The application materials were submitted on November 29, 2018.
32. A Determination of Completeness was issued on December 31, 2018.

33. The Notice of Application was provided January 3, 2019.
34. The Notice of Public Hearing was provided February 1, 2019.
35. The project is consistent with Chelan County Code (CCC) Chapter 11.23 in the following respects:
  - 35.1 The proposed development is within the Urban Residential-2 (UR2) zone of the Manson Urban Growth Area, which permits fences.
  - 35.2 The proposed use is consistent with the Chelan County Code.
36. The project is consistent with CCC Chapter 11.88.170 in the following respects:
  - 36.1 The applicant is requesting to vary the fence height requirement of CCC 11.88.170(1)(A), which states that fences are not to exceed an erected height of 6 feet in a rear yard area.
  - 36.2 The applicant has applied for a variance to vary the rear yard fence height to a maximum of 9 feet from the required 6 feet in the rear yard area.
37. The project is consistent with CCC Chapter 11.95.030 (1)(a) in the following respects:
  - 37.1 The applicant has applied for a variance to vary the rear yard fence height to a maximum of 9 feet from the required 6 feet in the rear yard area.
  - 37.2 Fences are a permitted use in the Urban Residential-2 (UR2) zone and create a barrier between parcels to enclose, screen, or separate areas per CCC 14.98.750.
  - 37.3 This variance will not constitute a special privilege as fences are a typical use found within residential zones to provide land owners separation from adjacent properties.
38. The project is consistent with CCC Chapter 11.95.030 (1)(b) in the following respects:
  - 38.1 The applicant has provided photos demonstrating the elevation differences between the two properties attached as Exhibit A. Because of the slope towards the subject property, the neighbors retain an almost unobstructed view into the backyard.
  - 38.2 The plight of the applicant is due to the topography of the subject property.
39. The project is consistent with CCC Chapter 11.95.030 (1)(c) in the following respects:
  - 39.1 The neighboring property's rear yard terraces towards the subject property through the installation of retaining walls. The swimming pool that is setback off the property line is built up approximately 4 feet with the retaining wall giving it an elevated location rather than sloping to a lower elevation with the natural topography. The applicant has planted arborvitae trees in order to provide some privacy screening along the rear property line, but it has not resulted in an adequate screen.
  - 39.2 The hardship does not appear to be the result of the owner's actions.
40. The project is consistent with CCC Chapter 11.95.030 (1)(d) in the following respects:
  - 40.1 The authorization of this variance would not be materially detrimental to the purposes of Title 11. The authorization of this variance would promote the goals and objectives of Title 11 and the comprehensive plan. Directives and goals for the Land Use section of the Manson Subarea Plan aim to respect property rights and to respect constraints from topographic and environmental conditions.
  - 40.2 Goal LU-3: Create enjoyable and safe neighborhoods that support a variety of housing types and income levels.

- 40.3 The authorization of this fence height variance would promote the installation of a privacy screen and is consistent with other properties in the area.
- 40.4 The authorization of this variance would not be injurious to property in the same district or neighborhood in which the property is located. This application is requesting approval of the preservation of a property right the same as is enjoyed by other properties in the neighborhood. The authorization of this variance would avoid injury to the applicant's property rather than cause injury to other property in the neighborhood. The authorization of this variance would not be detrimental to the objectives of the comprehensive plan.
- 41. The project is consistent with CCC Chapter 11.95.030 (1)(e) in the following respects:
  - 41.1 Per Chelan County Code Section 11.88.170(1), topography is not taken into consideration when reviewing the maximum fence height within yard areas. From the neighboring property up slope, their view of the proposed fence will not exceed the maximum of 6 feet in the rear yard area of the subject property. Although the fence is proposed at a maximum height of 9 feet from grade, the neighboring parcel will result in a similar view of a rear yard fence as what is outright permitted within Chelan County.
  - 41.2 The hardship is a result of the application of the Chelan County Code to the subject property based on site specific conditions, which does not factor in steep terrains or historically platted parcels.
- 42. Based upon the foregoing facts and analysis, staff concluded the proposal is consistent with Chelan County Zoning Resolution and Comprehensive Plan.
- 43. An open record public hearing was held on February 13, 2019.
- 44. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
- 45. Appearing and testifying on behalf of the applicant was Robert Beebe. Mr. Beebe is the owner of the property. Mr. Beebe indicated that the applicant had no objection to any of the proposed conditions of approval.
- 46. Admitted into the record were the following exhibits:
  - 46.1 Exhibit 1: Affidavit of Posting.
- 47. No member of the public testified at this hearing.
- 48. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
- 49. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

## **CONCLUSIONS OF LAW**

- 1. The Hearing Examiner has been granted authority to render this Decision.
- 2. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Chelan County Code and Comprehensive Plan.
- 3. As conditioned, the proposal will conform to the standards specified in the Chelan County Code.

4. As conditioned, the use will comply with all required performance standards as specified in the Chelan County Code.
5. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of either the Chelan County Code or the Comprehensive Plan.
6. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

## **DECISION**

Based upon the above noted Findings and Fact and Conclusions of Law, request for variance, V 2018-416, Beebe is hereby **APPROVED**, subject to the conditions noted below.

## **CONDITIONS OF APPROVAL**

1. 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.
2. The project shall be in compliance with the Chelan County Zoning Resolution, in addition to all other applicable local, state and federal regulations.
3. The project shall proceed in substantial compliance with the application of record and revised site plan date stamped November 29, 2018.
4. Pursuant to Chelan County Code 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.
5. Pursuant to Chelan County Code Section 11.95.060, the granting of a variance and the conditions set forth runs with the land; compliance with conditions of the variance is the responsibility of the current owner of the property, whether that is the applicant or a successor.
6. Pursuant to Chelan County Code 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.
7. Pursuant to Chelan County Code Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits for a fence not to exceed 9 feet in height.
  8. Pursuant to Chelan County Code Section 11.88.190, no construction activity shall be permitted within one thousand feet of an occupied residence between the hours of 8:00 p.m. to 6:00 a.m., Monday through Friday, and 8:00 p.m. to 7:00 a.m. on weekends.
  9. Pursuant to RCW 27.53.060, the owner/developer/contractor shall contact the Confederated Tribes of the Colville Reservation and the Washington State Department of Archaeology and Historic Preservation 10 days prior to any ground disturbing activities in order for an agency

representative to be present on site. If any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.

9.1 An inadvertent discovery plan shall be submitted with the building permit application and kept onsite during all land disturbing activities. A sample of this plan is attached as Exhibit B.

10. Chelan County is not responsible for notification or enforcement of covenants or deed restrictions affecting use or title. Any permit issued does not acknowledge or recognize any covenants or deed restrictions or reservations that may burden or otherwise affect this property. Applicant/owner assumes all risks and liability for any claims and liabilities for covenants or deed restrictions or reservations.

Approved this 15<sup>th</sup> day of February, 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.