

IN THE MATTER OF

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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:

1. This is an application for a front yard variance has been requested to reduce the required setback from 25 feet to front property line to 5 feet from front property line in order to construct a detached. The subject property is identified as a corner lot as it fronts on North Shore Drive and an unopened county right of way; therefore, it holds a 25 foot setback from the front property line as located adjacent to the unopened right of way.
2. The Applicant / owner is TPTB, LLC (Tom Brandt), PO Box 2963, Spokane, WA 99220.
3. The project location is 17801 North Shore Drive, Leavenworth, WA 98826.
4. The parcel number of the subject property is 27-16-14-700-415.
5. The legal description of the property is the West half of Lot 3 and all of Lot 4, Block 18 of Mountain Park Summer Homes recorded July 14, 1909 under AFN: 28454.
6. The proposed development is not within an Urban Growth Area.
7. The Comprehensive Plan designation is Rural Waterfront (RW).
8. The zoning designation is Rural Waterfront (RW).
9. The site is residential with an existing residence (BP 150221—finalized December 13, 2016) and is .34 acres.
11. The subject property has moderately steep slopes and partially forested topography. The existing residence is built into the natural grade of the slope.
12. The property to the north is North Shore Drive and is zoned Rural Waterfront (RW).
13. The property to the south is Lake Wenatchee, a 'rural' shoreline environment designation.

13. The property to the east is in residential use and is zoned Rural Waterfront (RW).
14. The property to the west is in residential use and is zoned Rural Waterfront (RW).
15. Single family residences are exempt from aquifer recharge area disclosure form per Section 11.82.060(2)(A).
16. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species Maps, the subject property does not contain identified habitat areas. Therefore, the provision of Chelan County Code Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.
17. Pursuant to the Federal Emergency Management Agency, panel # 5300150750B 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.
18. Pursuant to Chelan County Code Chapter 11.86, the subject site does contain geological hazards. Therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District do apply. A geologic site assessment will be required at the time of building permit application.
19. 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 associated with Lake Wenatchee; therefore, the provisions of Chelan County Code Chapter 11.80 Wetland Areas Overlay District do not apply.
20. Pursuant to the modification provision per Chelan County Code Section 11.78.140 for real property with lot depths of 300 feet or less in depth existing prior to the date of adoption of the resolution codified in this chapter (June 6, 1999), the following riparian buffer width reduction is permitted:
 - 20.1 The riparian buffer may be reduced to a maximum of 25% of the lot depth; provided, said riparian buffer is not less than 25 feet in width or less than the common line setback pursuant to the Chelan County shoreline master program, whichever is greater:
 - 20.2 $\text{Min. Lot Depth} = 188' + \text{Max. Lot Depth} = 190' - \text{Totals } 378'$
(/) by 2 (x) 0.25 equals a riparian setback of **47.25 feet for the subject property.**
 - 20.3 The detached garage is proposed **approximately 132 feet** from the OHWM of Lake Wenatchee. Therefore, the provisions of Chelan County Code Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.
21. The subject property is within the jurisdiction of the Chelan County Shoreline Master Program (CCSMP). The subject property has a shoreline environmental designation of 'rural' on Lake Wenatchee, a shoreline of statewide significance.

- 21.1 Per BP 150221, the existing residence is located 47.25 feet from the ordinary high water mark; the common line setback was calculated at 26 feet from OHWM.
 - 21.2 The proposed detached garage is **approximately 132 feet** from the ordinary high water mark of Lake Wenatchee and is proposed to be constructed behind (roadside) of the existing residence. Therefore, the setback provisions of the Chelan County Shoreline Master Program have been met.
22. Based on the comment letter from the Confederated Tribes of Colville (dated January 3, 2019), the proposed project area lies within a 'high risk' or high probability area for encountering cultural resources.
23. Applicant indicates they plan to start late spring 2019 and should be finished 120 days from issuance date of building permit.
24. The subject property is accessed directly from North Shore Drive, a public road.
25. Water will be provided by Lake Wenatchee via withdraw permit.
26. Sanitation will be provided by Chelan County PUD.
27. Power is provided by Chelan County PUD.
28. The noise will be similar to other residential and personal recreational uses on Lake Wenatchee.
29. Visual impacts will be similar to other residential uses; the proposed garage is to be placed landward of the existing residence.
30. The proposed development would create a structure closer to the public road.
31. 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 10, 2019 with comments due January 24, 2019. No public comments were received.
32. Agency comments were considered by the Hearing Examiner and, when appropriate, incorporated as Conditions of Approval. The following agencies responded:
 - 32.1 Chelan County Fire Marshal responded on January
 - 32.2 Chelan County Public Works
 - 32.3 Fire District #9
 - 32.4 Lake Wenatchee Sewer District
 - 32.5 Confederated Tribes of Colville
33. The following agencies were notified but did not respond:

- 34.1 WA State Dept. of Archaeology and Historic Preservation
- 34.2 Yakama Nation
- 34.3 Chelan County Natural Resources
- 35. No public comment letters were received.
- 36. 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.
- 37. The application materials were submitted on December 12, 2018.
- 38. A Determination of Completeness was issued on January 8, 2019.
- 39. The Notice of Application was provided January 10, 2019.
- 40. The Notice of Public Hearing was provided February 13, 2019.
- 41. 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.
- 42. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Rural Waterfront (RW) for consistency with the proposed project which permits residential uses. The Hearing Examiner finds that the project, as conditioned, is consistent with the Comprehensive Plan.
- 43. The project is consistent with Chelan County Code (CCC) Section 11.04 in the following respects:
 - 43.1 The proposed development is associated with the Rural Waterfront (RW) zoning district which permits accessory structures.
 - 43.2 The proposed use is consistent with the code.
- 44. The project is consistent with Chelan County Code (CCC) Section 11.16.020 in the following respects:
 - 44.1 The applicant is requesting to reduce the required front yard setback of 25 feet from property line to 5 feet from the front property line that abuts the unopened county right of way.
 - 44.2 A corner lot can be defined as a parcel of land abutting upon two or more streets per Chelan County Code, Section 14.98.1135.
 - 44.3 The applicant has applied for a zoning variance to reduce the front yard setback from the required 25 feet from property line to 5 feet from property line.
- 45. The project is consistent with CCC Section 11.06.020(4) in the following respects:
 - 45.1 The applicant is required to meet all lot coverage standards.

- 44.2 The proposed building will be reviewed for consistency with the lot coverage requirements at the time of building permit.
45. The project is consistent with Chelan County Code (CCC) Chapter 11.95 in the following respects:
46. No variance shall be granted unless it can be shown that all of the following conditions exist:
- 46.1 The variance is necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same neighborhood or district and shall not constitute a grant of a special privilege.
- 46.2 The Mountain Park Summer Homes Plat was recorded in 1909 and denotes 10 roads leading to the lake. The roads have never been built—several of the surrounding lots have structures with the current setback requirement of 25 feet.
- 46.3 The applicant is requesting to reduce the front yard setback which abuts the unopened right of way dedicated for public access to the lake via the Plat of Mountain Park Summer Homes. The applicant is seeking a reduction from the required 25 feet to 5 feet from front property line in order to construct a detached garage.
47. This variance will not constitute a special privilege as the surrounding properties have constructed residential and accessory structures within the required front yard setback.
- 47.1 The plight of the applicant is due to unique circumstances such as topography, lot size or shape, or size of buildings, over which the applicant has no control.
- 47.2 The existing lot appears to have some limitation due to topography and is a non-conforming width of approximately 70 feet.
48. The subject property has a natural topography of steep slopes that leads down towards the lake. The area proposed for the garage is a natural bench that has been historically cleared for the installation of a driveway.
49. The lot was created prior to current zoning regulations that require a minimum of 80 feet for a corner lot per Chelan County Code Section 11.16.020 standards for lots within the Rural Waterfront zoning.
50. The plight of the applicant is in part due to the topography of the subject property together with the lot being created prior to current zoning regulations.
- 50.1 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
51. The existing access road is established and constructed previously under County permit and takes up the east side of the lot. There is not enough remaining property to the west of the road to place a new garage without a variance.
52. Due to the unopened right of way along the west property line, the garage is unable to be placed 5 feet from side property line similar to other lots that are not burdened by double frontage. If the garage was placed further from the west property line, it would be located in the center of the existing driveway. The location of the driveway was reviewed by Chelan County Public Works during building permit application for the existing residence; the driveway location was approved as being the best suited location for the approach to a Chelan County Road (Permit No. 7422) per driveway regulation standards.

53. The hardship does not appear to be the result of the owner's actions.
54. The authorization of the variance shall not be materially detrimental to the public welfare and safety, to the purposes of this title, be injurious to property in the same district or neighborhood in which the property is located, or be otherwise detrimental to the objectives of the comprehensive plan.
55. The surrounding area is residential and it was previously determined in an earlier request for a variance that there were no known plans to develop the public access. We do not believe that this variance would impact the general public's welfare or safety or be detrimental to the surrounding properties
56. The authorization of this variance would not be materially detrimental to the purposes of Title 11; this variance would promote the goals and objectives of Title 11 and the comprehensive plan. The proposed development for a detached garage is similar to other uses and structures within the same zoning district and subdivision. Chelan County Code Chapter 11.04 District Use Chart, permits detached garages within the RW zoning district.
57. The proposed garage will provide two off-street parking spaces as required by Chelan County Code Section 11.16.020(6)(A).
58. Rural Waterfront (RW) is a LAMRID zoning designation. Policy 5 and 8 of Goal 1 of the Land Use Element and Policy 7 and 8 of Goal 2 as well as Policy 2 of Goal 6 of the Rural Element, found within the Comprehensive Plan address development on LAMIRD (Limited Area of More Intense Rural Development) parcels.
59. The authorization of this front yard variance would promote the development of the property for the new garage in an already cleared area. It would allow for the garage to be built harmoniously into the hillside conforming to the environment as it would better suit the steep nature of the site. Additionally, the location of the garage would eliminate the need to relocate the existing driveway which in return would avoid the clearing of additional trees as well as creating additional surface for stormwater runoff to be displaced.
60. 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.
 - 60.1 The hardship asserted by the application results from the application of this title to the property.
 - 60.2 The application of the zoning setback requirements appear to result in hardship for building in the proposed location.
61. The Plat of Mountain Park Summer Homes was approved and recorded by Chelan County in July of 1909. Today's code requires a front yard setback of 25 feet from property line on all sides that front on roads. The configuration of the lot was created prior to the implementation of the corner lot zoning regulations per Chelan County's current code.
62. 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 historically platted parcels.

64. Based on the information contained in the application, submitted materials and compliance with both the Chelan County Comprehensive Plan and Chelan County Codes, staff recommended approval of this variance with the recommended conditions of approval as the applicant's hardship has been verified and the need for a variance is not a granting of special privileges.
65. Approval of the variance shall constitute authorization a building area 10' from the front property line along Cedar Brae and 5' from the property line along an unnamed County right-of-way along the west property line, in accordance with the standards established by the decision and any conditions imposed by the Hearing Examiner.
66. The variance is requested to reduce the required setback from 25 feet to 5 feet to front property line in order to construct a detached garage. The subject property is identified as a corner lot as it fronts on North Shore Drive and an unopened county right of way; therefore, it holds a 25 foot setback from front property line as located adjacent to the unopened right of way.
67. Based on the deed of record, the parcel is interpreted as being 2 legal lots. The current interpretation of the legal description would require that a boundary line adjustment eliminating the line between the west half of Lot 3 and Lot 4 of the Plat of Mountain Park Summer Homes be completed prior to the issuance of a building permit.
68. Pursuant to WAC 173-14-040, a single family residence and appurtenances are exempt from a substantial development permit (CCSMP, Section 11). This does not preclude regulating such use. In instances where both shoreline and riparian buffers apply, the more restrictive applies. In addition, the proposed structure may not exceed 35 feet in height (pursuant to SMP 16.1.2(b)). The proposed attached garage meets both the riparian and common line setback requirements for the south north of Lake Wenatchee.
69. The application and site plan date stamped December 12, 2018 states and shows the location for the garage area. The proposed location of the garage allows for adequate backing of vehicles prior to entering of the right of way.
70. Chelan County Zoning Resolution Section 11.95.030 (1) requires that all of the above-described conditions exist in order to grant a variance. The proposal has demonstrated that the requested variance meets the established criteria for the approval of variances pursuant to Chelan County Zoning Resolution Section 11.95.030(1) (A-E). This variance would grant the applicant a property right enjoyed by other property owners in the neighborhood or district.
71. Therefore, based upon the foregoing facts and analysis, staff concludes the proposal is consistent with Chelan County Zoning Resolution and Comprehensive Plan.
66. An open record public hearing was held on February 13th, 2019
67. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
68. Appearing and testifying on behalf of the applicant was *. M*. * is the agent authorized to appear and speak on behalf of the applicant. M*. * testified that the hardship of the applicant in developing this property is due to *. M*. * indicated that the applicant had no objection to any of the proposed conditions of approval.
70. No member of the public testified at this hearing.

75. No member of the public testified at this hearing.
76. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
77. 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, VAR 2018-441, TPTB, LLC, is hereby **APPROVED**, subject to the conditions noted below.

CONDITIONS OF APPROVAL

1. All conditions imposed by the Hearing Examiner shall be binding on the "Applicant", which terms shall include 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 and site plan of record date stamped December 12, 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.
8. Pursuant to Chelan County Code Section 11.86.020, a geologic site assessment shall be required at the time of building permit application.
9. 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.
10. 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.
 - 10.1 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 A.
11. 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 15th 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.