

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF	)	
	)	
VAR 2019-007	)	FINDINGS OF FACT,
Davis	)	CONCLUSIONS, DECISION
	)	AND CONDITIONS OF
	)	APPROVAL

THIS MATTER, having come on before the Chelan County Hearing Examiner on May 6, 2020. 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. This is an application to vary the setback from the front property line from 25 feet to 10 feet in order to place a park model cabin on the property.
2. The owners are Michael and Roxanne Davis, 128 Old Tulalip Road, Marysville, WA 98271.
3. The project location is 25701 Camp 12 Road, Plain, WA 98826.
4. The parcel number of the subject property is 26-17-24-794-420.
5. The legal description of the subject property is Lot 1, Block 7, Primitive Park Fifth Addition, Vol 7, P. 45-49.
6. The subject site 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 current property is currently vacant.
10. The subject property is flat and has partially forested topography.
11. The site size is 0.29 acres.
12. The property to the north is Camp 12 Road and is zoned Rural Waterfront (RW).
13. The property to the south is residential use and is zoned Rural Waterfront (RW).
14. The property to the east is Camp 12 Road and is zoned Rural Waterfront (RW).
15. The property to the west is in residential use and is zoned Rural Waterfront (RW).
16. Residential development is exempt from Aquifer Recharge review, pursuant to Chelan County Code Chapter 11.82.(2)(A).

17. 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.
18. The subject property is not within the jurisdiction of the Chelan County Shoreline Master Program (CCSMP). Therefore, the provisions of the CCSMP do not apply.
19. Pursuant to the Federal Emergency Management Agency, FIRM panel #5300150775B on the subject property is outside of identified flood hazard. 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.
20. 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.
21. 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.
22. No comment was received from any of the Tribes or from DAHP. Although the proposed development lies in an area with no historic or prehistoric sites, staff is making a recommended Condition of Approval that an inadvertent discovery plan would be required at time of building permit submittal. Pursuant to RCW 27.53.020, full cooperation among the Department of Archaeology and Historic Preservation and other agencies is required to ensure information regarding the possible impact of construction activities on the state's archaeological resource is maintained. Staff recommended notification if any artifacts are uncovered or discovered during the development of the proposed variance.
23. Construction Phasing/Timing: Construction shall commence once the variance is approved and a building permit is issued.
24. Access: The subject property is accessed directly from Camp 12 Road, a public road.
25. Water: Shared private well.
28. Sanitation: Private septic system.
29. Power: Chelan County PUD.
30. Fire protection: The property is located within Chelan County Fire District #9 (Lake Wenatchee Fire District) and Chelan County Fire District #4 is the backup fire district.
31. Noise: Similar to other residential uses in the Primitive Park development.

32. Visual impacts: Similar to other residential uses; the proposed single-family residence shall be placed on the property similar to other residences in the area.
33. 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 31, 2020 with comments due February 14, 2020. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval. The following summarizes responding agencies:
34. The following are agencies that were notified:

<b>Agencies Notified</b>	<b>Response Date</b>	<b>Nature of Comment</b>
Chelan County Fire Marshal		No Comment Received.
Chelan County Public Works	4/27/2020	The traveled way (edge of road) is approximately 30 ft. from the front property line. Public Works has no objection to the variance request.
Fire District #9	2/6/2020	The Fire District serving this lot is Lake Wenatchee Fire and Rescue (CCFD9) vice CCFD 4. Clarity with Planning is address clearly in the past and current situation a decision needs to be made re: road name Primitive Park or Camp 12 Road (both are the same). The potential requested setback makes no difference to us.
WA State Dept. of Archaeology and Historic Preservation		No Comment Received.
Yakama Nation		No Comment Received.
Confederated Tribes of Colville		No Comment Received.
Chelan-Douglas Health District	2/5/2020	No Comment; recommends further approval.
Chelan County PUD	2/4/2020	There is electrical service available at the subject property. A primary line extension will be required. Chelan PUD will obtain any necessary easements. An engineering study may be required to determine whether updating of current utility lines or transformers will be required.
Washington Department of Fish and Wildlife		No Comment Received.

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 October 18, 2019.

38. A Determination of Completeness was issued on January 28, 2020.
39. Notice of Application was provided on January 31, 2020.
40. Notice of Public Hearing was provided on April 24, 2020.
41. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Rural Waterfront (RW) for consistency with the proposed development which permits residential uses. The Hearing Examiner finds that the development, as conditioned, is consistent with the Comprehensive Plan.
  - 41.1 Chelan County Code, Chapter 11.04 District Use Chart
    - 41.1.1 The proposed development is associated with the Rural Waterfront (RW) zoning district which allows single family dwellings as permitted uses.
    - 41.1.2. The proposed use is consistent with Chelan County Code.
42. Chelan County Code, Section 11.16.020 Standards
  - 42.1 All development in this zone shall meet the applicable provisions of the Chelan County Code, including, but without limitation the following:
    - 42.1.1. Front yard: twenty-five feet from the front property line or fifty-five feet from the street centerline, whichever is greater.
    - 42.1.2. Rear yard: twenty feet from the rear property line.
    - 42.1.3 Side Yard: five feet from the rear property line.
  - 42.2 The requirement of twenty-five feet from the front property line is greater than fifty-five feet from the street centerline, therefore this provision applies. The applicant is requesting to reduce the required front yard setback of 25 feet to 10 feet from the front property line.
  - 42.3 The applicant has applied for a zoning variance to reduce the front yard setback from the required 25 feet from the front property line to 10 feet from the front property line. According to the Primitive Park Fifth Addition plat map, an existing BPA easement encroaches 62.5 feet onto the rear of the property, which is greater than the minimum 20 foot rear setback. The project is consistent with Chelan County Code (CCC) Section 11.04 in the following respects:
43. The project is consistent with CCC Section 11.95.030 Evaluation criteria in the following manner:
  - 43.1 No variance shall be granted unless it can be shown that all of the following conditions exist:
    - 43.1.1. 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.
    - 43.1.2. The applicant's own the neighboring property to the north of the proposed land and are currently building a 28' x 24' cabin. They plan to construct the same type of cabin structure on the proposed land in which can only be possible if they are granted the variance to build closer to the road.
    - 43.1.3. The applicant is requesting to reduce the front yard setback which abuts Camp 12 Road. The applicant is seeking a reduction from the required 25 feet from the front property line to 10 feet from the front property line in order to place a park model cabin.

- 43.1.4. This variance would not constitute a special privilege as the surrounding properties have constructed residential and accessory structures. Although several other lots in the Primitive Park Fifth Addition also have the BPA easement across the rear of their properties, these lots enjoy a larger buildable footprint due to their rectangular shape and/or their location in relation to the BPA easement.
- 43.2 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.
  - 43.2.1. The applicant's property has a triangle shape to it that makes it difficult to place a footprint for a buildable structure if having to use a conventional 25 foot setback. Without the granted variance, the applicant's run the risk of not being able to build within the setbacks around the perimeter of the parcel.
  - 43.2.2. The existing lot appears to have development limitations due to a BPA easement that was in existence prior to creation of the plat in 1968. The pre-existing BPA easement encompasses the rear 62.5 feet of the lot and no structures can be placed within this easement due to the powerlines overhead. The remaining triangular shape of the lot creates a difficult situation when developing a building footprint for construction of a residence and placement of a septic system because of the required 25 foot front property setback.
  - 43.2.3 The plight of the applicant is in part due to the existing BPA easement over 62.5 feet of the property together with the lot being created prior to current zoning regulations.
- 43.3. The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
  - 43.3.1. The way the property is laid out with the BPA easement and the required front setback make it hard to place a park model cabin on the property. With the front setback changed from 25' to 10' would let us position the park model on the property.
  - 43.3.2. Due to the pre-existing BPA easement and the triangle shape of the property, with all applicable building setbacks, placing a residence on the property along with the required septic system would be nearly impossible.
  - 43.3.3. The hardship does not appear to be the result of the owner's actions.
- 43.4. 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.
  - 43.4.1. The authorization of this variance would not be materially detrimental to the public welfare or safety nor would it be injurious to the Ponderosa community in which the proposed parcel is located.
  - 43.4.2. The authorization of this variance would not be materially detrimental to the purpose of Title 11. This variance would promote the goals and objectives of Title 11 and the comprehensive plan. The proposed development for a single-family residence is similar to other uses and structures within the same zoning

district and neighborhood. Chelan County Code Chapter 11.04 District Use Chart, permits single family residences within the RW zoning district.

- 43.4.3. The authorization of this front yard variance would promote the development of the property for the new single-family residence. The development would not be injurious to property in the same neighborhood in which the development 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 promote the goals and objectives of Title 11 and the comprehensive plan.
- 43.5. The hardship asserted by the application results from the application of this title to the property.
  - 43.5.1. The Plat of Primitive Park Fifth Addition was approved and recorded by Chelan County in April of 1968. The current code requires a front yard setback of 25 feet from the front property line.
  - 43.5.2. The hardship is a result of the application of the Chelan County Code to the subject property based on property specific conditions, which does not factor in historically platted parcels.
44. The project is consistent with CCC Section 11.95.030 (1)(A) in the following respects:
  - 44.1 The zoning district permits the placement of detached garages. The applicant is seeking a variance to place a garage 10' from the highway property line which has front yard setback. This section of the highway does not permit direct access to the property due to slope and highway design.
  - 44.2 The variance for the reduced front yard setback would permit the placement of the garage which is similar to other uses in the area.
45. The variance requested by the applicant is to reduce the required front yard setback from 25 feet from the front property line to 10 feet from the front property line. The application and site plan submitted October 18, 2019 identifies the proposed location of the single-family residence.
46. Based upon the foregoing facts and analysis, the Hearing Examiner concludes the proposal is consistent with Chelan County Zoning Resolution and Comprehensive Plan.
47. An open record public hearing was held on May 6, 2020.
48. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
49. The Applicant did not appear at the hearing. The Applicant had notice of the date, time and manner of the hearing.
50. No member of the public appeared at this hearing.
51. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.

52. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

## II. 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 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.

## III. DECISION

Based upon the above noted Findings and Fact and Conclusions of Law, request for variance, VAR 2019-007, Davis, is hereby **APPROVED**, subject to the conditions noted below.


## IV. 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 development shall be in compliance with the Chelan County Zoning Resolution, in addition to all other applicable local, state and federal regulations.
3. The development shall proceed in substantial compliance with the application and site plan of record date stamped October 18, 2019.
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, 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.
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 6th day of May, 2020.

CHELAN COUNTY HEARING EXAMINER



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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.