

JUN 18 2020

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

CHELAN COUNTY
COMMUNITY DEVELOPMENT

IN THE MATTER OF)	
)	
VAR 20-001 / RIPV 20-001 / HMMP 20-003)	FINDINGS OF FACT,
Yokomichi)	CONCLUSIONS, DECISION
)	AND CONDITIONS OF
)	APPROVAL

THIS MATTER, having come on before the Chelan County Hearing Examiner on June 17, 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 for a variance, riparian variance, and habitat management mitigation plan submitted to reduce the required front yard and riparian buffer setback for the construction of a residence. The variance request is to reduce the required 55 ft. setback from the centerline of Lehman Road to 35 ft. to centerline. The riparian variance request is to reduce the required 150 ft. buffer setback to 25 ft. from the ordinary high water mark (OHWM) of Squilchuck Creek, a fish-bearing (type F) stream.
2. The owner is Stephanie Yokomichi, 25060 Hancock Ave, Suite 103-281, Murrieta, CA 92562.
3. The project location is NNA Squilchuck Rd., Wenatchee, WA 98801.
4. The parcel number of the subject property is 21-20-09-220-025.
5. The legal description of the subject property is: Lot 4 of CE 2013-303, recorded December 27, 2013 under AFN: 2394740. The subject property is 0.50 acres according to Assessor's records.
6. The subject property is located outside of an Urban Growth Area.
7. The Comprehensive Plan designation is Rural Waterfront (RW).
8. The zoning designation is Rural Residential/Resource 2.5 (RR2.5).
9. The subject property is currently undeveloped.
10. The subject property is located between Lehman Road and Squilchuck Road. The parcel is bisected by Squilchuck Creek, an F-type stream, from the southwest to northeast. The 150 ft. buffer from both sides of the creek encumbers the entire property. The proposed building area is highly modified in nature as it is leveled and lacking mature vegetation.
11. The site size is 0.50 acres.
12. The property to the north is Lehman Road (Public) and is zoned Rural Residential/Resource 2.5 (RR2.5) & Rural Residential/Resource 5 (RR5).

13. The property to the south is Squilchuck Road (Public) and is zoned Rural Residential/Resource 5 (RR5).
14. The property to the east is zoned Rural Residential/Resource 2.5 (RR2.5).
15. The property to the west is zoned Rural Residential/Resource 2.5 (RR2.5).
16. 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.
17. Pursuant to CCSMP 3.4, Squilchuck Creek is not considered a shoreline of statewide significance. Therefore, the provisions of the CCSMP would not apply to the subject property.
18. According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the subject property contains riparian habitat Class II Priority Habitat Species. Therefore, the provisions of CCC 11.78, as it relates to Class II habitat, would apply. Pursuant to the Washington State Department of Natural Resources FPARS stream typing map, the subject property is bisected by Squilchuck Creek, an F-typed stream. Therefore, the provisions of CCC 11.78 for riparian areas, would apply, except as amended per this application.
19. Based on WA Dept. of Ecology mapping system, the subject property contains forested shrub wetlands. However, per Wetland Determination prepared by Grette Associates, LLC on October 24, 2013, there were no wetlands on site. Additionally, as a response to comments from WA Dept. of Ecology, Grette Associates, LLC reevaluated the subject property for wetlands on April 30, 2020. The conclusion of no wetlands on site were affirmed.
20. According to the Federal Emergency Management Agency, FIRM panel # 5300150650A, there is indication of flooding on the subject property. Therefore, the provisions of CCC 11.84 and CCC 3.20 would apply. A Floodplain Development Permit may be required per Chelan County Building Division (see Conditions of Approval No. 5).
21. According to the Chelan County GIS mapping, the subject property is located within a geologically hazardous area. Therefore, the provisions of CCC 11.86 would apply. A geological site assessment would be required with building permit application.
22. 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.
23. Construction Phasing/Timing: Construction will begin upon issuance of all necessary permits and within the appropriate work window.
24. Access: The subject property is proposed to access off of Lehman Road, a county right of way.

25. Water: The subject property would be provided water by Chelan County PUD.
26. Sanitation: The subject property is proposing an on-site septic system.
27. Power: Chelan County PUD.
28. Fire protection: The property is located within Chelan County Fire District #1.
29. Noise: 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 10:00 p.m. to 7:00 a.m.
30. Visual impacts: Due to the natural vegetation and topography, visual impacts are anticipated to be minimal.
31. 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 24, 2020, with comments due April 7, 2020. No public comments were received for the application. 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:
32. The following are agencies that were notified:

Agencies Notified	Response Date	Nature of Comment
Chelan County Fire Marshal	No Comment	
Chelan County Building Official	No Comment	
Chelan County Public Works	April 7, 2020	No objection with variance request.
Chelan County PUD	No Comment	
WA Dept. of Archaeology and Historic Preservation	No Comment	
Yakama Nation	No Comment	
Confederated Tribes of Colville	April 13, 2020	No comment or concerns regarding application request.
WA Dept. of Ecology	April 7, 2020	Concerns of water quality issues due to the reduced riparian buffer.
WA Dept. of Natural Resources	No Comment	
US Army Corps of Engineers	No Comment	
WA Dept. of Fish & Wildlife	No Comment	

33. No public comment letters were received.

34. 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.
35. The application materials were submitted on February 21, 2020.
36. A Determination of Completeness was issued on March 19, 2020.
37. The Notice of Application was provided on March 24, 2020.
38. The Notice of Public Hearing was provided on June 5, 2020.
39. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Rural Residential/Resource 2.5 (RR2.5) Comprehensive Plan designation and Critical Areas, for consistency with the proposed residential development.
 - 39.1 The project is consistent with the Rural Residential/Resource 2.5 purpose statement: to maintain the range of rural development opportunities consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan. These areas can provide buffering or transitions between existing rural developments and areas of higher or lower densities...appropriate uses include: residential, agriculture, and forestry.
 - 39.2 Additionally, the project is consistent with Goal CL 1 of the Resource Element: Identify and protect critical areas from adverse environmental impacts while providing for reasonable use of the property.
 - 39.3 The Hearing Examiner finds that the project, as conditioned, is consistent with the Comprehensive Plan.
40. Chelan County Code 11.14.020: Standards for the RR2.5 Zoning District:
 - 40.1 Minimum Lot Size: 2.5 acres:
 - 40.1.1. Front yard: twenty-five feet from the front property line or fifty-five feet from the street centerline, whichever is greater The applicant is not requesting to modify the lot size.
 - 40.1.2. This requirement does not apply.
 - 40.2 Minimum Lot Width: 100 ft. at the front building line:
 - 40.2.1 The lot exceeds 100 ft. at the front building line.
 - 40.2.2 The lot complies with the required building width.
 - 40.3 Maximum Building Height: 35 ft.
 - 40.3.1 Building height would be calculated during building permit review.
 - 40.3.2 Building height would be determined during review of the building permit application. As conditioned, the proposed residence will not exceed 35 feet.
 - 40.4 Maximum Lot Coverage: Buildings and structures shall not occupy more than 35% of the lot area.
 - 40.4.1 According to Chelan County Assessor's records, the property is 0.5 acres, this would allow for over 7,600 sq. ft. of lot coverage.
 - 40.4.2 Lot coverage would be reviewed at time of building permit application.

- 40.5 Minimum Setback Distances: Front yard 25 ft. from the front property line or 55 ft. from the street centerline, whichever is greater; Side yard 5 ft. from side property line; Rear yard 20 ft. from rear property line.
 - 40.5.1 Except as modified with this application, the proposed residence would meet the applicable zoning setbacks.
 - 40.5.2 As conditioned, the proposed residence would meet the setbacks, except as modified by this application.
- 40.6 Off-street parking requirements in this district shall be as follows: (A) Two spaces per single-family dwelling.
 - 40.6.1 Based on the site plan of record, a driveway is proposed for the residence.
 - 40.6.2 The proposed driveway location would satisfy the off-street parking requirement.
- 41. The project is consistent with CCC Section 11.95.030 Evaluation criteria in the following manner:
 - 41.1 No variance shall be granted unless it can be shown that all of the following conditions exist:
 - 41.1.1 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.
 - 41.1.2 With the presence of Squilchuck Creek, there is no area to build that is located outside of the 150 ft. buffer or the front yard setback from Lehman Road. Although small in nature, neighboring properties have been developed with residences and appurtenances within the riparian buffer of the creek.
 - 41.1.3 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.
 - 41.2 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.
 - 41.2.1 Due to the unusual shape and location of the lot, the configuration makes for a challenging building area. Although the parcel was "created" in 2013 through a Certificate of Exemption, the parcel technically already existed upon the construction of Lehman Road pursuant to CCC 12.14.050(4), division by intervention, a lot created or reconfigured by a public road.
 - 41.2.2 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 in addition to the creation of the subject property.
 - 41.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
 - 41.3.1 The hardship asserted by the owners appears to not be of their own actions. The hardship stems from the application of Chelan County Title 11. This includes the location of the Squilchuck Creek with its associated 150 ft. protective buffer as well as the required front yard setbacks.

- 41.3.2 The hardship of the 150 ft. buffer encumbering the entirety of the subject property is a result of the application of Title 11 and not of the owner's actions.
- 41.4 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.
 - 41.4.1 The proposal is to create a building envelope for a single family residence. Single family residences are a permitted use in the RR2.5 zoning district as well as outlined in the Chelan County Comprehensive Plan.
 - 41.4.2 As a way to protect Squilchuck Creek, the applicant proposes to build closer to Lehman Road. Comments received from Chelan County Public Works dated April 7, 2020 states, "Public Works has no issue with the requested road setback of 35 ft. from centerline".
 - 41.4.3 The proposal satisfies the objectives of the comprehensive plan for the RR2.5 zone and critical areas. The proposal is not anticipated to be materially detrimental to the public welfare and safety or injurious to property in the neighborhood.
- 41.5 The hardship asserted by the application results from the application of this title to the property.
 - 41.5.1 Due to the presence of the creek with the associated buffer and the required yard setbacks, the entirety of the subject property is encumbered by unbuildable areas. The application of the required setbacks of CCC Title 11 creates an overlapping building restriction.
 - 41.5.2 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 the establishment of critical areas or zoning restrictions.
- 42. The granting of a variance should not:
 - 42.1 Be substantially based upon precedent established by illegal or nonconforming circumstances.
 - 42.1.2 The variance request is based on the subject property's encumbrances due to the application of the Title 11 critical areas for riparian areas and required zoning setbacks. The parcel was legally established pursuant to CCC 14.98.1090 definition of legal lot of record being as it was created through a Certificate of Exemption as well as referenced in recorded deeds dated prior to October 17, 2000.
 - 42.1.3 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 buffers as well as zoning setback requirements of the RR2.5 zoning district.
 - 42.2 Be substantially based upon lack of reasonable economic return or a claim that the existing/proposed structure is too small.

- 42.2.1 Currently, the subject property does not contain structures. 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.
- 42.2.2 There is no claim of economic return. The reduced buffer and front yard setback would provide a building area for a modest residence.
- 42.3 Be based on the fact that the condition, for which the variance is requested, existed at the time the applicant acquired the property.
 - 42.3.1 The owners acquired the property in 2014. The lot has been in existence since 1943 or earlier based on recorded deeds, prior to the establishment of critical areas regulations and Lehman Road. Squilchuck Creek and the current zoning setbacks for the RR2.5 zoning district did exist at the time the applicant acquired the property.
 - 42.3.2 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.
- 42.4 Result in a de facto zone reclassification.
 - 42.4.1 The proposed variance would not change the permitted land uses.
 - 42.4.2 This would not apply.
- 42.5 Be substantially for the purpose of circumventing density regulations.
 - 42.5.1 The proposed variance would not affect density.
 - 42.5.2 This would not apply.
- 43. Chelan County Code 11.78.230: Riparian Variance Provisions:
 - 43.1 In addition to the requirements of Chapter 11.95 of this title as amended, a variance shall not be granted unless it can be shown that all of the following conditions exist:
 - 43.1.1 Significant impacts to the fish and wildlife habitat functions as stated in Section 11.06.020 would be mitigated by the applicant by addressing with conditions of approval where practical.
 - 43.1.2 With application, the applicant submitted a Habitat Management & Mitigation Plan. The area proposed for development has been historically cleared and does not provide ecological function. Best Management Practices (BMPs) as required have been proposed in order to alleviate erosion and water run-off.
 - 43.1.3 Based on comments from WA Dept. of Ecology dated April 7, 2020, additional work and care may be needed to be performed to prevent any degradation of the riparian area and water quality.

- 43.1.4 The Hearing Examiner is requiring as a condition of approval that a temporary erosion and sediment control (TESC) plan must be submitted and approved prior to the commencement of the proposed development.
- 43.1.5 The project, as conditioned, would not result in significant impacts to fish and
- 43.2 No other reasonable use with less impact is possible.
 - 43.2.1 Due to the critical areas as well as the location Squilchuck Road and Lehman Road, the property is burdened by multiple constraints.
 - 43.2.2. In order to allow for a reasonable use of the property, via residential development, it is difficult to avoid all potential impacts to the riparian buffer as the buffer expands beyond the subject property. However, no new riparian vegetation disturbance would result from the proposed development.
 - 43.2.3 The proposed residence is modest 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 and topography.
- 43.3 Impacts to fish and wildlife habitat cannot be lessened through location or design changes to the proposed use.
 - 43.3.1 Based on the applicant's narrative, the proposed development has been designed to avoid Squilchuck Creek and the associated buffer to the greatest extent possible. The residence is to be located as far as feasible from the stream.
 - 43.3.2 The Hearing Examiner finds, as conditioned, the proposed mitigation would offset impacts to fish and wildlife habitat.
- 44. The proposed variances to reduce the associated riparian buffer of Squilchuck Creek are 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 zoning and critical areas ordinance of Title 11, the subject property is entirely encumbered by protective buffers associated with the creek as well as the required yard setbacks. Based on the application materials and as conditioned, the proposed development is not anticipated to result in adverse effects to Squilchuck Creek. The development is to occur in an area that has been historically cleared and with the implementation of the mitigation measures the development should not result in a net loss of ecological function.
- 45. An open record public hearing was held on June 17, 2020.
- 46. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
- 47. Ryan Walker, Grette Associates, LLC, agent for the applicant, appeared and testified that the applicant had no objection to the proposed conditions of approval. Mr. Walker testified that without this variance, the property could not be developed because the setbacks encompass

essentially the entire property. He testified that the proposed building, with the proposed 30x30 structure, is a very modestly sized structure.

48. The Hearing Examiner kept the record open until 5:00 p.m. on June 17, 2020, to allow the County to submit proposed revisions to proposed Condition of Approval No. 5 and to allow a member of the public, who was listening in at the video hearing, to submit written comments, should that person desire. The Hearing Examiner could not speak with the person on the video conference because the person's mute button was on the entire time. That is why the Hearing Examiner kept the record open to allow this person to submit written commentary, should they so desire. No such testimony was received.
49. No member of the public appeared at this hearing.
50. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
51. 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, VAR 20-001, RIPV 20-001 and HMMP 20-003, is 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 February 21, 2020.
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 11.95.040 and RCW 90.48, a temporary erosion and sediment control plan (TESC) shall be submitted with building permit application.
 - 3.1 No ground disturbing activities shall commence until the implementation of the TESC plan.
4. 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.
5. 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.
 - 5.1 Documentation, as provided by a licensed surveyor, stating that the subject property is located outside of any floodplain, may relinquish the requirement of a floodplain development permit.
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 11.88.190, 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.
8. 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.
9. 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.

10. 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.
11. 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.
12. 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 18th day of June, 2020.

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.