

**CHELAN COUNTY**

DEPARTMENT OF HEARING EXAMINER

316 WASHINGTON STREET, SUITE 301  
WENATCHEE, WASHINGTON 98801

**BEFORE THE CHELAN COUNTY HEARING EXAMINER**

<b>IN THE MATTER OF:</b>	)	<b>FINDINGS OF FACT</b>
AA 2020-004	)	<b>AND DECISION ON APPEAL OF</b>
	)	<b>STOP WORK ORDER</b>

**FINDINGS OF FACT**

1. An application for an Administrative Appeal was submitted to appeal the Stop Work Order for the Construction of a Single Family Residence, BP190765 and BP 190729.
2. The Appellants are Vince and Lesa Bland (Trustees of Bland Living Trust).
3. The agents for Appellants are Ryan Kelso (Complete Design, Inc. - construction) and Clay Gatens (Gatens Green Weidenbach PLLC - Legal Counsel).
4. The subject property is located at 8420 Heimbigner Road, Dryden, Washington. Assessor's Parcel No. 24-18-35-330-050.
5. The property is zoned as Commercial Agricultural Lands (AC).
6. The subject property is currently in agricultural use with (2) existing SFRs (one SFR since removed), a swimming pool, a garage, a shop, and multiple storage sheds.
7. The Stop Work Order was issued June 2, 2020 for BP 190729 and BP 190765.
8. The Stop Work Order was mailed on June 2, 2020.
9. On June 16, 2020, the administrative appeal was timely filed with Chelan County Community Development with the associated application fees.
10. The Notice of Public Hearing was issued on June 27, 2020.
11. On June 22, 2020, a Determination of Complete was issued and sent to the owner and the owner's legal representation.

12. The applicant applied for and received two building permits. One is for a remodel of an existing SFR and the second is for an addition to the same existing SFR. Upon the site visit for a requested building inspection of footings for the addition, it was observed the entire former SFR had been demolished and removed. No walls remained, and only scattered remnants (stones and chunks of concrete) of the former foundation remained. Being as there was no longer a SFR to remodel or a permit for a new SFR, nor a demolition permit for the existing structure, the building inspector “unapproved” the pending footing inspection.
13. On November 14, 2019, BP 190729 for a Single Family Addition/Remodel/Alteration was issued.
  - 13.1 The permit allowed the removal of 95 sq. ft. of existing covered porch and remodeling interior of master room and living room. The Foundation Plan only shows new foundation in the area of the remodel, and not the entire structure. In fact, the application itself only references an “interior remodel.” The project would result in a loss of 95 sq. ft. of impervious surface. The permit does not authorize the demolition of the entire structure and a reconstruction of that structure.
14. On December 9, 2019, BP 190765 for a Single Family Addition/Remodel/Alteration was issued.
  - 14.1 The permit allowed an addition to an existing SFR renovation to include: 568 sq. ft. main floor and 129 sq. ft. covered porches/decks. The application itself does not state that demolition of the entire structure is contemplated. The building permit application states that the application was for “an addition” and not a “remodel.” The applicant was given the option to mark that the project was an “addition” or “remodel” on the application. The permit does not authorize the demolition of the entire structure and a reconstruction of that structure.
15. On May 19, 2020 Chelan County Building Inspector Miro Gabaldo arrived at the property address for a requested footing inspection. At that time, he observed that the existing home had been completely demolished and removed. There were footings formed for the entire proposed footprint of the existing structure and proposed addition, but no existing building structure or foundation remained. He did not approve the footing form work due to the work being outside the scope of permitted construction of the issued permits.
16. On May 20, 2020 Acting Assistant Direct Deanna Walter had communication with the owner’s agent, Ryan Kelso that he had been told verbally by department staff that the work observed was permitted under the permits they had obtained. Ms. Walter advised that the setbacks would have to be increased for any new construction, and could not exceed the former square footage of area. The existing nonconforming structure could be remodeled, and repaired on the site, but not completely removed

- and built anew. Once the entire structure was removed, it no longer met setbacks and would have to follow the current code.
- 16.1 Pursuant to CCC Section 11.97.015, no structure or part of a structure shall be erected, moved, reconstructed, extended, enlarged, remodeled, repaired, or altered, except in conformity with all current Chelan County development regulations, except as permitted in this chapter.
  - 16.2 According to the site plan of record for BP 190765, the existing SFR that was to be remodeled and include an addition was “nonconforming” due to its front yard setback encroachment. As stated in CCC Section 11.97.015(3), that portion of a nonconforming structure which is conforming to all Chelan County regulations may be expanded so long as the use of the structure is also conforming. For example, if a structure is nonconforming due to a front yard setback encroachment, that portion of the structure outside of the front yard setback may be expanded. Therefore, the structure could include an addition, so long as the proposed addition is located outside of the nonconforming front yard encroachment.
17. On May 26, 2020, Director Jim Brown and Acting Assistant Director Deanna Walter met with the Board of County Commissioners via Zoom meeting at the request of the owners and their agent, who were also in attendance.
- 17.1 Several options were provided by the department to Mr. Kelso and the Blands to obtain the proper county permitting for any new construction along with restrictions regarding setbacks and complying with new ADU size limitations.
  - 17.2 None of the options provided included continuing to build a new structure on the former site in nonconformance with the current code.
  - 17.3 Mr. Kelso stated that former Planning Manager, Kirsten Larsen, and former Director, David Kuhl, had given them permission to do this scope of work under the issued permits. Mr. Kelso was asked to provide any written documentation of such communication, as both employees no longer work in the department. No documentation was provided.
  - 17.4 Director Brown, Assistant Director Walter, and the administrative supervisor for the department, searched files and conducted email searches for the former employees named. No emails on this subject property were found, nor permission to conduct work in the manner as it had been done.
  - 17.5 A copy of a pre-project site plan without showing the proposed addition, dated August 19, 2019, was found on the desk of former Planner Larsen. No notes accompanied that plan, nor were any notes on those reported discussions found in either of the building permit files.

18. On May 27, 2020, Director Brown returned a phone message to Mr. and Mrs. Bland to discuss what had been said at the county board meeting Zoom call. It was reiterated why the project was out of compliance with their issued permits and could not continue in scope or location of the previously existing SFR.
  - 18.1 Both Mr. and Mrs. Bland insist that the department told them they could do this project exactly as they had under their existing permits. Documentation of this conversation, or the names of staff that provided this information to the Blands, has not been provided.
19. On May 28, 2020, Director Brown and Assistant Director Walter again spoke with Mr. Kelso by phone and reiterated the department's position. Mr. Kelso was again asked to provide any emails or other verification the permission to use the permits to perform the work done thus far in removing the entire structure with the stated intent to rebuild on the same footprint. No documentation was provided.
20. Upon further investigation of Chelan County records and files, and after conferring with the applicants and their agent, it was determined the proper building and land use permits for the current work had not been obtained. Any further work beyond the scope of the currently issued building permits would require different building permits to be issued and those would have to be in compliance with planning related requirements for removal and rebuild of Non-conforming Structures under CCC Section 11.97.015.
21. Pursuant to CCC Section 16.10.010, Chelan County Community Development Building Official David Spencer issued a Stop Work Order for construction activities outside the scope of currently issued building permits which was mailed to the applicants by Jim Brown, Director of Community Development to the applicants on June 2, 2020.
22. Being as there is an additional house existing on the subject property and the second existing legally nonconforming SFR has been removed, any new SFR would have to meet the code criteria for an Accessory Dwelling Unit (ADU) pursuant to CCC Section 11.88.200.
  - 22.1 As proposed, the SFR structure would be larger than 1,200 sq. ft.; therefore, would not conform with CCC Section 11.88.200(4).
23. Because the second existing legally nonconforming SFR has now been removed, any new SFR would have to meet the minimum required setbacks for the Commercial Agricultural Lands (AC) zoning pursuant to CCC Section 11.30.020.
  - 23.1 Typically, the required front yard setback for AC zoning is 25 ft. from the front property line or 55 ft. from the street centerline, whichever is greater. However, being as the proposed structure is to be a dwelling, the following setbacks would apply: no new dwelling unit shall be placed within 100 ft. of a property zoned as AC.

- 23.2 Being as the property south of the subject property is zoned AC, the setback for the proposed SFR would be 100 ft. A waiver, in compliance with CCC Section 11.30.020(6)(C), would allow a SFR to be located closer than 100 ft. but in no case, shall the new setback be less than the minimum standards for the zoning. Therefore, the setback for this property line could be no less than 25 ft. from the front property line or 55 ft. from the street centerline, whichever is greater.
- 23.3 A signed waiver was submitted, but not formally recorded, for the proposed SFR. However, the requested setback was for 16 ft. from front property line. As stated, the new setback shall not be less than the minimum standards for the zoning, in this case 25 ft. from the front property line or 55 ft. from the street centerline, whichever is greater. Therefore, the proposed 16 ft. setback would not apply unless a formal front yard variance, in accordance with CCC Chapter 11.95, was obtained.
24. CCC 11.97.015 sets forth standards for non-conforming structures. Significantly, section one states: “No structure, or part of a structure, may be erected, moved, reconstructed, extended, enlarged, remodeled, repaired or altered except in conformity with all current Chelan County development regulations, except as permitted in this chapter.” (Emphasis added).
25. It is clear that the Chelan County Code considers the reconstruction of a non-conforming structure to be different than the remodeling of a non-conforming structure.
- 25.1 The terms “reconstructed” and “remodeled” are not defined in the Chelan County Code.
- 25.2 According to Merriam-Webster online dictionary, to reconstruct means to “construct again.” This same dictionary defines remodel as “to alter the structure of; remake.” An example given in the online dictionary is “we remodeled the kitchen last year.” “We completely remodeled the house after we moved in.” To remodel clearly means to make limited changes to an existing structure, while “reconstruct” clearly includes the demolition of an existing structure and the rebuilding of a new structure.
- 25.3 The Hearing Examiner finds that the actions of the appellant are not consistent with a reasonable definition of a “remodel”. Instead, the actions of the appellant are much more consistent with the definition of “reconstruct”.
26. CCC 11.97.015(2) further states that: “remodeling...to a non-conforming structure may occur so long as the structure is in compliance with current building codes.”
27. Chelan County Code Section 14.12.010: Administrative appeals:

- 27.1 An administrative appeal to the hearing examiner shall be filed with the department within ten working days of the issuance of the decision appealed, together with the applicable appeal fee. The Appellants timely filed their Notice of Appeal.
- 27.2 The Notice of Appeal contained a concise statement identifying:
- 27.2.1 The decision being appealed; (B) The name and address of the appellant and his/her interest(s) in the application or proposed development; (C) The specific reasons why the appellant believes the decision to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision is erroneous; (D) The specific relief sought by the appellant; (E) The appeal fee.
28. After due legal notice, an open record public hearing on the appeal was held on July 15, 2020. At this hearing, the entire staff file for AA2020-004, as well as BP190765 and BP190729 were admitted into the record.
29. Appearing and testifying on behalf of the Appellant was Clay Gatens. Mr. Gatens is the attorney for the Appellant. Mr. Gatens testified consistent with his Notice of Appeal, as well as his July 13, 2020 letter, with exhibits A-D. This letter and exhibits were all admitted into the record.
30. Mr. Gatens restated his arguments that the building was not “entirely” demolished because there were portions of the foundation that were retained.
31. The file contains photographs of this remaining foundation. The remaining foundation can be fairly characterized as stones and chunks of concrete. The Appellant has chosen to completely reconstruct the foundation, but is attempting to use certain remnants of the prior foundation into the new foundation.
32. The Hearing Examiner finds that the new foundation is “stand alone” and there is no evidence that the remnants of the prior foundation are necessary components of the new foundation.
33. The Appellant’s position is that because there are remnants of the old foundation remaining, that this fact renders this entire project a remodel. The Hearing Examiner finds that this position is neither factually, nor legally, correct.
34. To illustrate Appellant’s position, the Hearing Examiner asked Mr. Gatens whether or not incorporating simply one square foot of a remnant of the prior concrete foundation into the new foundation, would render the project consistent as a remodel. Mr. Gatens indicated that, yes, even using just one square foot remnant of the old foundation as part of the new foundation would render the project a legal remodel.

35. The Hearing Examiner finds that completely demolishing the prior existing building down to simply remnants of the old foundation remaining, (such demolition being inconsistent with the application materials and the issued permits), and utilizing portions of those remnants into the new foundation (when there is an entire new foundation that has been poured) does not render this project a remodel.
36. Also testifying on behalf of the Applicant was Ryan Kelso. Mr. Kelso testified regarding his past interactions with Chelan County staff that he testified started two years ago. He indicated that he discussed this project with two prior employees of the Chelan County Department of Community Development. He testified that he was orally told that no additional permits would be needed, even though the above ground portions of the prior building had been entirely demolished. Mr. Kelso testified that he knew the permit applications were submitted that the building may need to be demolished down to its foundation. This was not stated in either application.
37. The applications submitted by Mr. Kelso do not mention in the narrative that there would be a demolition of the entire structure or that it was even contemplated that they would demolish of the entire structure. Instead, those applications were for an “interior” remodel, as well as a limited addition.
38. The Appellant’s position is that the demolition of the building and pouring of the new foundation was part of the original application. However, the actual applications do not support this claim.
39. There is no written documentation supporting the recollections of Mr. Kelso that the County employees agreed that no additional permitting would be necessary after the entire single-family residence was demolished. The Hearing Examiner finds that, although the testimony of Mr. Kelso was not refuted by any testimony from County officials, the fact that there were no emails or other documentation located on this important subject after search by Chelan County, and the fact that Mr. Kelso indicates that he never sent an email confirming this understanding to the County, that there must have been some misunderstanding on Mr. Kelso’s part.
40. Written public comments were received from Wade Reiman, dated July 13, 2020, and Grady and Evelyn Arnold, dated July 13, 2020.
41. No member of the public testified at the hearing.
42. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
43. 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. A non-conforming structure cannot be reconstructed, except in conformity with all current Chelan County development regulations. The single-family residence that was demolished by the Appellant was a non-conforming structure.
3. Demolishing a single-family residence so that that only remnants of the prior foundation remain, and incorporating portions of those remnants into the new foundation, does not render the reconstruction of the single-family residence a remodel as defined and commonly understood.
4. Any Finding of Fact that is more correctly a Conclusions of Law is incorporated herein as such by this reference.

### **DECISION**

WHEREFORE, based upon the above Findings of Fact and Conclusions of Law, the Stop Work Order dated June 2, 2020, issued for BP 190729 and BP 190765 rendered by the Chelan County Community Development Director, **IS HEREBY SUSTAINED** in all respects.

Dated this 27 day of July, 2020.

CHELAN COUNTY HEARING EXAMINER

  
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Andrew L. Kottkamp

**This decision is subject to appeal pursuant to the Chelan County Code. Appeals must be timely filed. Anyone considering an appeal of this decision should seek immediate legal advice.**