

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)	
)	
WV 20-001)	FINDINGS OF FACT,
R&B INVESTMENTS, LLC)	CONCLUSIONS, DECISION
)	AND CONDITIONS OF
)	APPROVAL

THIS MATTER, having come on before the Chelan County Hearing Examiner on August 12, 2020, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

FINDINGS OF FACT

1. This is an application for a wetland variance submitted to reduce the associated wetland buffer for the construction of an accessory structure (garage), septic system, and driveway. The structure will not be used as a dwelling unit. The subject property contains a Category II wetland that holds a protective buffer of 100 ft. The application proposes to reduce the Category II wetland buffer from 100 ft. to 15 ft. for the proposed residential development. The proposed accessory structure is to have a building footprint of approximately 2,600 sq. ft. As part of the proposed project, the applicant proposes the installation of roughly 6,040 sq. ft. of native mitigation plantings within and adjacent to the wetland. The plantings would enhance the subject area with a more diverse habitat.
2. The applicant/owner is R&B Investments, LLC, 17357 N. Shore Dr., Leavenworth, WA 98826.
3. The agent is Grette Associates, LLC, Attn: Ryan Walker, 151 South Worthen Street, Suite 101, Wenatchee, WA 98801.
4. The project location is NNA Wending Lane, Leavenworth, WA 98826.
5. The parcel number of the subject property is 27-18-32-572-010.
6. The legal description of the subject property is Lot 1 of the Plat of Forest Glen, recorded on May 5, 1987 under AFN: 8705050028. The subject property is 1.49 acres.
7. The project locations are outside of an Urban Growth Area.
8. This property is not located in an urban growth area (UGA).
9. The Comprehensive Plan designation is Rural Residential/Resource 2.5 (RR2.5).
10. The zoning designation is Rural Residential/Resource 2.5 (RR2.5).
11. The subject property is currently vacant with no known permit history.

12. The subject property is a corner lot with a slight slope down from the north and county road to the south. Approximately 2/3 of the subject property is designated as a Category II depressional wetland.
13. The property to the north and east is zoned Rural Residential/Resource 2.5 (RR2.5).
14. The property to the south is Wending Lane, county road and is zoned Rural Residential/Resource 2.5 (RR2.5).
15. The property to the west is Chiwawa Loop Road, county road and is zoned Rural Recreational/Residential (RRR).
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. According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the subject property does not contain WDFW Priority Habitat Species. Therefore, the provisions of CCC 11.78 as it relates to priority habitat would not apply. Pursuant to the Washington State Department of Natural Resources FPARS stream typing map, a stream was indicated on the subject property. The report concluded that the stream running east to west and intersecting the subject property is designated as a seasonal non-fish bearing (Ns) stream which holds a 50 ft. protective buffer. Therefore, the provisions of CCC 11.78 for riparian areas, would apply.
18. As stated, the subject property contains a Category II depressional wetland. Therefore, the provisions of CCC Chapter 11.82 would apply.
19. The Category II wetlands along with the Ns-typed stream are not considered shorelines of statewide significance. Therefore, the provisions of the Chelan County Shoreline Master Program would not apply.
20. According to the Federal Emergency Management Agency, FIRM panel # 5300150575B, no flooding is indicated on the subject property. Therefore the provisions of CCC 11.84 and 3.20 would not apply.
21. The County GIS data map does not indicate there to be known geologically hazardous conditions on the subject property. However, pursuant to CCC 11.86.020(3), the risk of hazard is unknown and the subject property may be potentially unstable due to groundwater seepage and springs. The administrator may require a geologic site assessment and/or geotechnical report to determine the actual presence or absence of a geologically hazardous area. Therefore, staff recommended as a condition of approval that the applicant is required to submit a geological site assessment with building permit application.
22. Pursuant to 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. Pursuant to WAC 197-11-800(6) (b), variance applications that do not result in an increase in density are categorically exempt from the environmental review process.
24. Construction will begin upon issuance of all necessary permits and within the appropriate work window.
25. The subject property is a corner lot with dual frontage on Wending Lane and Chiwawa Loop Road, both county roads. Based on the site plan of record, the driveway is proposed to access off of Wending Lane.
26. Power is provided by Chelan County PUD No. 1.
27. With development, an on-site septic system is proposed.
28. The subject property is located within the boundaries of Fire District #9.
29. Being as the proposed development is to be a residential accessory structure, the visual impact is anticipated to be minimal as the surrounding properties are developed residentially.
30. The application was submitted on June 10, 2020.
31. The Determination of Completeness was issued on July 2, 2020.
32. The Notice of Application was referred to jurisdictional agencies, adjacent property owners (within 300' excluding 120' of right-of-way) and departments of the County on July 9, 2020, with comments due on July 23, 2020. The Notice of Public Hearing was provided on July 31, 2020.
33. The following agencies were notified. 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:

Agencies Notified	Response Date & Nature of Comment
Chelan County Building Official	July 9, 2020 – Structures must comply with all provisions of the International Residential Codes in accordance with RCW 19.27.
Chelan-Douglas Health District	July 24, 2020 - A new septic system would require a permit consistent with WAC 246-272A.
Department of Archaeology & Historic Preservation	July 14, 2020 – The subject property is located in an area of high risk potential for archaeological resources; an inadvertent discovery plan is requested.
WA Dept. of Ecology	July 21, 2020 – recommends additional enhancements plantings to ensure the wetlands' function and values are protected.

Agencies Notified	Response Date & Nature of Comment
Chelan County Fire Marshal	No comments received
Chelan County PUD	
Cascade School District	
Fire District No. 9	
WA Dept. of Natural Resources	
WA State Dept. of Fish & Wildlife	
Yakama Nation	
Confederated Tribes of the Colville Reservation	

- 34. No public comments were received.
- 35. 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.
- 36. 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. This designation should not function as an urban reserve area, although these areas may someday be incorporated into an urban growth area.
- 37. 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. The Hearing Examiner finds that the project, as conditioned, is consistent with the Comprehensive Plan.
- 38. Chelan County Code 11.14.020: Standards for the RR2.5 Zoning District.
 - 38.1 Minimum Lot Size: 2.5 acres
 - 38.1.2 The applicant is not requesting to modify the lot size.
 - 38.1.3 This requirement does not apply.
 - 38.2 Minimum Lot Width: 100 ft. at the front building line
 - 38.2.1 The lot exceeds 100 ft. at the front building line.
 - 38.2.2 The lot complies with the required building width.
 - 38.3 Maximum Building Height: 35 ft.
 - 38.3.1 Building height would be calculated during building permit review.
 - 38.3.2 Building height would be determined during review of the building permit application. As conditioned, the proposed accessory structure will not exceed 35 feet.
 - 38.4 Maximum Lot Coverage: Buildings and structures shall not occupy more than 35% of the lot area.

- 38.4.1 According to Chelan County Assessor's records, the property is 1.49 acres, this would allow for over 22,000 sq. ft. of lot coverage. Based on the site plan of record, dated June 10, 2020, the total lot coverage upon completion of the project would be approximately 2,600 sq. ft.
- 38.4.2 The project meets the requirement for maximum lot coverage.
- 38.5 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.
 - 38.5.1 As indicated on the site plan of record, the proposed accessory structure would meet the applicable zoning setbacks.
 - 38.5.2 The proposed accessory structure would meet the minimum setbacks.
- 38.6 Off-street parking requirements in this district shall be as follows: (A) Two spaces per single-family dwelling.
 - 38.6.1 Based on the site plan of record, a driveway is proposed for the accessory structure.
 - 38.6.2 The proposed driveway location would satisfy the off-street parking requirement.
- 39. Chelan County Code 11.95.030: Variance Evaluation Criteria. No variance shall be granted unless it can be shown that all of the following conditions exist:
 - 39.1 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.
 - 39.1.1 The proposed accessory structure is similar in size and appears to be compatible with other structures in proximity to the project location.
 - 39.1.2 The applicant's project is similar to the residential development on the surrounding properties. The variance appears to be necessary to preserve a right substantially the same as possessed by owners within the same area and would not grant special privilege.
 - 39.2 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.
 - 39.2.1 Due to the Category II wetland that encumbers approximately 2/3 of the subject property along with the dual frontage, the subject property has a small area that could be feasible for building.
 - 39.2.2 The variance request appears to be based on the presence of critical areas that are located on and adjacent to the subject property which the applicant has no control over.
 - 39.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
 - 39.3.1 The hardship asserted by the owners appears to not be of their own actions. The hardship stems from the application of the critical areas as outlined in Chelan County Title 11, this includes the location of the Category II wetland and its associated 100 ft. protective buffer.
 - 39.3.2 Additionally, the lot configuration was created prior to the adoption of the critical areas as they currently apply.
 - 39.3.3 The hardship does not appear to be of the owners' actions.

- 39.4 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.
- 39.4.1 The proposal is to create a building envelope for an accessory structure. The on-site septic drainfield is proposed to be placed outside of the riparian buffer of the Ns type stream and is to be located as far away from the wetland as possible.
- 39.4.2 The proposed accessory structure would be required to meet building code requirements and as proposed, would meet the required setbacks from property lines pursuant to the CCC Section 11.14.020.
- 39.4.3 Additionally with the application, a Habitat Management and Monitoring Plan was submitted. The plan proposes the planting of approximately 6,040 sq. ft. of native vegetation to provide a more diverse habitat area.
- 39.4.4 The proposal satisfies the objectives of the comprehensive plan for the RR2.5 zone and critical areas. As conditioned, the proposal would not be materially detrimental to the public welfare and safety or injurious to property in the neighborhood.
- 39.5 The hardship asserted by the application results from the application of this title to the property.
- 39.5.1 Based on Statutory Warranty Deed, dated October 28, 2019 under AFN: 2505132, the subject property was created via the plat of Forest Glen in 1987. Therefore, the current lot configuration was created prior to the establishment of critical areas regulations pursuant to Title 11 zoning.
- 39.5.2 The presence of the wetland with the associated buffer as well as the stream with protective buffer covers the entirety of the subject property that is proposed to be developed residentially.
- 39.5.3 The hardship appears to be a result of the application of CCC Title 11 to the subject property, which does not factor in historically created lots prior to critical areas.
- 39.6 The granting of a variance should not:
- 39.6.1 Be substantially based upon precedent established by illegal or nonconforming circumstances.
- 39.6.2 The variance request is based on the property's encumbrances due to the application of the Title 11 critical areas for riparian areas and wetlands. The parcel was legally established pursuant to CCC Section 14.98.1090 definition of legal lot of record being as it was created prior to October 17, 2000.
- 39.6.3 The project, as proposed, would conform to Chelan County building codes and setback requirements associated with the RR2.5 zoning. The hardship stems from the required critical areas for wetlands and the associated buffers.
- 39.6.4 The proposed variance appears to be based on the application of the Chelan County critical areas ordinance of Title 11 as it relates to the associated riparian and wetland buffers.
- 39.7 Be substantially based upon lack of reasonable economic return or a claim that the existing/proposed structure is too small.
- 39.7.1 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.

- 39.7.2 There is no claim of economic return. The reduced buffer would provide a building area for an accessory structure.
- 39.8 Be based on the fact that the condition, for which the variance is requested, existed at the time the applicant acquired the property.
 - 39.8.1 The owners acquired the property October 28, 2019. The lot was legally created in 1987, prior to the establishment of critical areas regulations.
 - 39.8.2 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.
- 39.9 Result in a de facto zone reclassification.
 - 39.9.1 The proposed variance does not change the permitted land uses.
 - 39.9.2 This does not apply.
- 39.10 Be substantially for the purpose of circumventing density regulations.
 - 39.10.1 The proposed variance does not affect density.
 - 39.10.2 This does not apply
- 40. Chelan County Code 11.80.120: Wetland Variance Provisions. 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:
 - 40.1 The analysis of the proposal's impact on wetland and wetland buffer areas determines that there would not be a significant impact to the wetland and wetland buffer functions as stated in CCC Section 11.06.020 or that significant impacts would be mitigated by the application.
 - 40.1.1 The proposed developments would be located on the highest ground possible within the wetland buffer but outside of the wetland boundary. The developing of the area would not result in removal of wetland vegetation, but rather grass and herbaceous species.
 - 40.1.2 As a way to alleviate the potential for adverse impacts to the wetland, native mitigation plantings are proposed via the submitted Habitat Management and Monitor Plan.
 - 40.1.3 The potential impact to the wetland and wetland buffer was assessed via the application materials, wetland delineation, and mitigation planting plan. Staff finds, as conditioned, that the potential impacts to the wetland and associated wetland buffer could be mitigated.
 - 40.2 No other reasonable use with less impact is possible:
 - 40.2.1 Based on the application materials and site plan of record, the proposed accessory structure and septic system appear to be designed in a manner that avoids significant impacts to the wetland and associated buffer to the greatest extent possible.
 - 40.2.2 Staff finds, as conditioned, that the proposed development would result in a minimal impact to the wetland and associated buffer while allowing reasonable use of the subject property.
 - 40.3 Impacts to critical lands cannot be lessened through locational or design changes to the proposed use.

- 40.3.1 As previously states, the project appears to be designed in a manner that would avoid significant impacts to the wetland and associated buffer to the greatest extent possible. The proposed mitigation plantings would enhance the function of the wetland by providing a more diverse habitat than that of grass and herbaceous species.
 - 40.3.2 The Hearing Examiner finds, as conditioned, that the proposed development would be designed in a manner to avoid significant impacts to the wetlands and associated buffer.
41. The proposed variance to reduce the associated wetland buffer would not be anticipated to constitute the granting of a special privilege as other properties in close proximity are developed residentially. Due to the application of the critical areas ordinance of Title 11, the subject property is entirely encumbered by protective buffers associated with the wetland present on site. The proposed mitigation plantings are anticipated to alleviate potential impacts that could be associated with the proposed residential development.
42. Based on the information contained in the application and the review of the Chelan County Comprehensive Plan, and the Chelan County Code, staff found that the proposal is consistent with Chelan County plans and regulations and recommended approval.
43. An open record public hearing was held on August 12, 2020.
44. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
45. Appearing and testifying on behalf of the applicant was Ryan Walker. Mr. Walker is the agent authorized to appear and speak on behalf of the applicant. Mr. Walker testified that the applicant had no objection to any of the proposed conditions of approval. Mr. Walker agreed that no further development of the property with an additional structure could occur due to the wetland setbacks. He testified that the only way this structure could be built is with the variance of the wetland setbacks. Mr. Walker indicated that no additional structure, such as a residence or dwelling unit, would be constructed on the property. He indicated that the structure being sought by this permit may be modified in the future to make it a dwelling unit.
46. No member of the public testified at this hearing.
47. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
48. 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 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, WV 2020-001 is hereby **APPROVED**.

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 Section 11.95.040, the construction shall be in substantial conformance with the site plan of record, dated June 10, 2020.
2. Pursuant to CCC Section 11.95.040 and the International Building Code, Section 105, the applicant shall obtain a building permit for the construction of the garage.
 - 2.1. If in the future the garage is to be converted to a dwelling, permitting shall be required to convert the structure.
3. Pursuant to CCC Section 11.80.110 and the Habitat Mitigation and Management Plan, date stamped June 10, 2020, the proposed plantings shall be completed prior to the final inspection of the building permit. If at such time the plantings cannot be completed prior to final inspection, bonding as outlined in CCC Chapter 14.16 shall be required.
4. Pursuant to CCC Chapter 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 Section 11.80.050(3), the location of the outer extent of the wetland buffer, the wetland boundary and the areas to be disturbed shall be marked in the field, and such field markings shall be approved by the administrator prior to the commencement of permitted activities. The location of these areas shall be clearly identified on the site plan. Such field markings shall be maintained throughout the duration of the permit.
6. Pursuant to CCC Section 11.80.060(4), all wetland buffer areas shall be temporarily fenced between the construction activity and the buffer area with a highly visible and durable protective barrier(s) during construction to prevent access and sedimentation from disturbed areas from entering the wetland or its buffer. This requirement may be waived by the administrator if an alternative to fencing which achieves the same objective is proposed and approved.

- 6.1. Prior to final inspection for the garage, a wildlife passable fence shall be permanently installed at the edge of the wetland and mitigation plantings to demark areas to be retained in natural conditions.
7. Pursuant to CCC Section 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 their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/ agent shall immediately notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.
 - 8.1. An inadvertent discovery plan must be submitted with the building permit application and kept onsite during all land disturbing activities.
9. Pursuant to CCC 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.
10. Pursuant to CCC Section 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 Section 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 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.
13. The structure may not be used as a dwelling unit without all required permits being received.

Approved this 13th day of August, 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.