

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

CUP 20-013
Smith

RECEIVED

SEP 18 2020

CHELAN COUNTY
COMMUNITY DEVELOPMENT

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND CONDITIONS
OF APPROVAL

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on September 16, 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 Conditional Use Permit for the construction of an accessory dwelling unit within the Suburban Residential zoning district of the City of Cashmere's Urban Growth Boundary. The accessory dwelling unit would be served by a single use well and would utilize an on-site septic system. The subject property is accessed off Kimber Road.
2. The applicant/owner is Gregg Smith, 5885 Kimber Road, Cashmere, WA 98815. His agent is Dave Phillips, PO Box 317, Cashmere, WA 98815.
3. The subject property is located at 5885 Kimber Road, Cashmere, WA 98815.
4. The parcel number for the subject property is 23-19-05-240-210.
5. The subject property is located within an Urban Growth Area (UGA).
6. The Comprehensive Plan designation and zoning designation for the subject site is Suburban Residential.
7. Currently on the property there is a 2,700 square foot single family residence built in 2007, a 960 square feet detached garage built in 2001, and a swimming pool constructed in 2016.
8. The subject property is relatively flat in nature and has portions of Brender Creek on it.
9. Surrounding property:
North: Suburban Residential zoning district.
South: Suburban Residential zoning district and Brender Creek.
East: Suburban Residential zoning district and Brender Creek.
West: Suburban Residential zoning district and Brender Creek and Locust Lane.
10. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped August 14, 2020. The proposed project does not require a vulnerability report, pursuant to Chelan County Code (CCC) Chapter 11.82.
11. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species data, the subject property contains habitat area for Mule Deer. Therefore, the provisions of Chelan County Code Chapter 11.78 do apply.

12. According to the Natural Resources Stream Typing Maps, streams are indicated on or adjacent to the subject property. Therefore, the provisions of CCC Chapter 11.78, would apply. The proposed Accessory Dwelling Unit (ADU) is over 150 feet away from Brender Creek.
13. Pursuant to Chelan County Code Section 11.86.202, the property is within a geologically hazardous area due to erodible soils. Therefore the provisions of the Chelan County Code Chapter 11.86 apply.
14. Pursuant to the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, no wetlands are indicated on or adjacent to the subject property. Therefore, the provisions of CCC Chapter 11.80 Wetland Areas Overlay District would not apply.
15. Pursuant to RCW 27.53.020, if cultural resources are found, the applicant would be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes of the Colville and Chelan County Department of Community Development.
16. Construction is anticipated to commence upon completion of all required permits.
17. The subject property is accessed off of Kimber Road, a 60-foot right-of-way.
18. Domestic water service shall be by single use well.
19. Power is by an extension of the Chelan County PUD.
20. Soil/site evaluation for placement of onsite sewage system is required.
21. Pursuant to WAC 197-11-800(6)(a) of the State Environmental Policy Act (SEPA), the proposed action is categorically exempt from environmental review and a threshold determination.
22. The Notice of Application was referred to surrounding property owners within 1,000 ft. (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on August 29, 2020 with comments due September 13, 2020. 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
Chelan County Fire Marshal	No Comment
Chelan County Building Official	August 28, 2020
Chelan-Douglas Health District	No Comment
Chelan County Public Works	September 1, 2020
Chelan County PUD	No Comment
Chelan County Fire District No.6	August 28, 2020
Cashmere School District	No Comment
WA Dept. of Archaeology and Historic Preservation	No Comment
Yakama Nation	No Comment
Confederated Tribes of Colville	August 28, 2020

23. No public comments were received.
24. The application materials were submitted on August 14, 2020.

25. A Determination of Completeness was issued on August 20, 2020.
26. The Notice of Application was provided on August 29, 2020.
27. The Notice of Public Hearing was provided on August 29, 2020.
28. The proposed development is located in the SR zoning district of Cashmere Municipal Code. According to Cashmere Municipal Code (CMC) Section 17.18 District Use Chart, Accessory Dwelling Units (ADU's) are permitted as a Conditional Use. "Accessory dwelling' means a separate living unit (apartment) integrated within a single-family dwelling, or one located as a detached accessory dwelling located on the same lot as a single-family dwelling."
29. Cashmere Municipal Code, Section 17.72.050: Evaluation criteria and general standards. Conditional uses shall comply with the following evaluation criteria and general standards:
 - 29.1 The proposed use will be harmonious and in accordance with the general and specific objectives of the comprehensive plan and all subarea plans.
 - 29.1.1 The surrounding properties are relatively the same size lots with single family residences situated on them.
 - 29.1.2 The proposed development would be compatible with the surrounding properties
 - 29.2 The proposed use will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity.
 - 29.2.1 The development would meet all the applicable provisions of the International Residential Code.
 - 29.2.2 This provision has been met.
 - 29.3 The traffic generated by the proposed use shall be mitigated so as not to burden the traffic circulation system in the vicinity.
 - 29.3.1 The development would not create any undue stress on the traffic in the vicinity. The applicant proposes to construct an accessory dwelling unit requiring only one additional parking space.
 - 29.3.2 This provision has been met.
 - 29.4 The proposed use will be adequately served by facilities and serviced such as highways, streets, law enforcement, fire protection, storm water drainage, refuse disposal, domestic water and sanitary sewers and schools; or that persons or agencies responsible for the establishment of the proposed use shall provide adequate services.
 - 29.4.1 Chelan County provided a Notice of Application to all providers; received comments are included in the file of record.
 - 29.4.2 Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development. As conditioned, the proposed development would be reviewed and addressed below.
 - 29.5 The proposed use will not create excessive additional requirement at public cost for public facilities and services.

- 29.5.1 The proposed development would not create any undue cost for the public facilities or services.
- 29.5.2 This provision has been met.
- 29.6 The proposed use will not involve uses, activities, proposes, materials, equipment and conditions of operation that will be detrimental to any persons, property or general welfare by reasons of excessive production of traffic, noise, smoke, fumes, vibration, glare or odors.
 - 29.6.1 Noise and Vibration: Noise and vibration would likely be minimal during the construction of the accessory dwelling unit.
 - 29.6.2 Heat, Steam, Odors, Smoke and Dust: The proposed development would not generate heat, steam, odors, smoke or dust.
 - 29.6.3 Erosion: The subject property is located within a geologically hazardous area for erosive soils; a geological assessment is required for erosion with this application.
 - 29.6.4 Water Quality: The proposed development would not have any impact to water quality; the accessory dwelling unit would not result in adverse impacts to the wells or aquifer.
 - 29.6.5 Wastes and Physical Hazards: No hazards were identified.
 - 29.6.6 Electrical Disturbance: The proposal would not result in electrical disturbances.
 - 29.6.7 Based on the above facts, noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties can be avoided or mitigated, as conditioned.
- 29.7 Proposed ingress and egress, driveway widths, parking and street improvement shall approved.
 - 29.7.1 The development would be accessed off of Kimber Road.
 - 29.7.2 Chelan County Public Works would issue an approach permit at time of building permit.
- 29.8 Adequate buffering devices such as fencing, landscaping, or topographic characteristics shall be in place in order to mitigate and protect adjacent properties from potential adverse impacts of the proposed uses, including visual and/or auditory effects.
 - 29.8.1 The CMC 17.72.110 does not required any buffering devices for an accessory dwelling units.
 - 29.8.2 This provision is unnecessary.
- 29.9 Conditional use permits shall comply with the CMC and all applicable local, state and/or federal regulations.
 - 29.9.1 The proposed use would comply with all applicable codes.
 - 29.9.2 Based on the review of this development, it complies with the CMC and all applicable local, state and/or federal regulations.

- 29.10 A conditional use shall ordinarily comply with the standards of the district within which the use is located and with the other applicable provisions of the CMC, except as modified by the approval of the conditional use permit and the standards of this chapter or as otherwise specified in the CMC.
- 29.10.1 The proposed development complies with the standards of the zoning district and those found in the CMC Conditional Use Code 17.72.
- 29.10.2 As conditioned, the proposed development would be reviewed and addressed below.
- 29.11 The hearing examiner may, in addition to the standards and regulations specified in the CMC, establish other conditions found necessary to protect the health, welfare, safety and interest of the surrounding properties, the neighborhood and the city as a whole.
- 29.11.1 Based on the application materials, and as conditioned, the proposed accessory dwelling unit would not pose any undue affects to the public health, safety and welfare.
- 29.11.2 This provision has been met.
30. Cashmere Municipal Code, Section 17.72.110: Accessory dwelling units - The minimum conditions for accessory dwelling units shall be as follows:
- 30.1 Only one accessory dwelling unit shall be allowed per building lot or home site in conjunction with a single-family structure, even if such structure is built on more than one platted lot.
- 30.1.1 The applicant is proposing to construct one accessory dwelling unit on a parcel that currently has a 2,900 square foot single family residence (BP# 070319) on it.
- 30.1.2 As conditioned, the proposed development would meet the provision of this section.
- 30.2 An accessory dwelling unit may be attached to, created within, or detached from a new or existing primary single-family dwelling unit.
- 30.2.1 The accessory dwelling unit is proposed to be attached to the detached garage that was just issued a building permit (BP# 200568) on June 19, 2020.
- 30.2.2 The applicant would have to submit a building permit for an addition to the detached garage or a remodel for a portion of the detached garage.
- 30.3 The property owner (which shall include title holders and contract purchasers) shall occupy either the primary unit or the accessory unit as their permanent residence. An annual ownership certification shall be required to ensure this condition is maintained.
- 30.3.1 The property owner currently lives on the subject property.
- 30.3.2 The applicant would have to submit a notice to title to the Chelan County Community Development office and have it recorded prior to the issuance of the building permit.
- 30.4 The accessory dwelling unit will require one parking space, which is in addition to any off-street spaces required for the primary single-family dwelling unit.
- 30.4.1 The accessory dwelling unit would be attached to a detached garage which would allow for at least one parking space.

- 30.4.2 As conditioned, the proposed development would meet the provision of this section.
- 30.5 The floor area for the accessory dwelling unit shall in no case exceed 900 square feet, nor be less than 300 square feet, and the accessory dwelling shall contain no more than two bedrooms. Additionally, the square footage of the accessory dwelling unit shall be no more than 50 percent of the area of the primary single-family dwelling.
- 30.5.1 The accessory dwelling unit shall be no more than 900 square feet and 2 bedrooms.
- 30.5.2 As conditioned, the proposed development would be reviewed and addressed at time of building permit submittal.
- 30.6 An accessory dwelling unit, together with the primary single-family dwelling unit and other accessory buildings or structures with which it is associated, shall conform to all other provisions of this code, and no variances of yard setback or building lot coverage requirement will be granted.
- 30.6.1 The accessory dwelling unit shall conform to all the provisions of this code and variances shall be granted.
- 30.6.2 This provision has been met.
- 30.7 The accessory dwelling unit shall meet the minimum requirements of the International Building Code, International Fire Code, Health District and all other local, state and federal agencies.
- 30.7.1 The International Building Code, International Fire Code and the Chelan Douglas Health District Code shall be reviewed at time of building permit submittal.
- 30.7.2 The provision would be met at time of building permit submittal.
- 30.8 The accessory dwelling unit shall have separate utility connections; however, the property owner, as shown on the Chelan County assessor records, shall be responsible for ensuring the utility bills associated with both the primary and accessory are paid in the timely fashion.
- 30.8.1 The accessory dwelling unit shall have separate utility connections.
- 30.8.2 This provision has been met.
- 30.9 Future subdivisions shall require compliance with all applicable provisions of the CMC including, without limitation, minimum lot size and yard area requirements.
- 30.9.1 There are no current plans to subdivide the property.
- 30.9.2 Additional review would be required if the property owner requested a subdivision.
- 30.10 Conversions of accessory storage structures, including without limitation garages and carports, to accessory dwelling units shall only occur when that existing structures meets the required yard setbacks for a residence, including without limitation the rear and side yard requirements.
- 30.10.1 The conversion of any structure shall meet zoning standards.
- 30.10.2 Zoning review would take place upon building permit submittal.

31. Department Analysis - The subject property is within a geologically hazardous area due to erodible soils and has submitted a geo assessment performed by Heath Geotechnical Services on August 13, 2020. The geo assessment is part of the file of record.
32. An open record public hearing after due legal notice was held using Zoom video conferencing on September 16, 2020.
33. Appearing and testifying on behalf of the applicant was Dave Phillips. Mr. Phillips indicated that he was an agent authorized to appear and speak on behalf of the property owner. Mr. Phillips indicated that the applicant had no objection to any of the proposed conditions of approval.
34. No member of the public testified at this hearing.
35. The Hearing Examiner has reviewed the applications and submitted materials. Based on the information contained in the applications and compliance with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code, the Hearing Examiner provides the attached conditions of approval.
36. 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 authority to render this Decision.
2. As conditioned, The proposed development would be compatible with the surrounding properties
3. As conditioned, the use will not be detrimental to the natural environment or the productive use of resource lands.
4. Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development. As conditioned, the proposed development would be reviewed and addressed below.
5. Based on the above facts, noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties can be avoided or mitigated, as conditioned.
6. Based on the review of this development, it complies with the Cashmere Municipal Code and all applicable local, state and/or federal regulations.
7. As conditioned, the proposed development would meet the provision of Cashmere Municipal Code, Sections 17.72.110 and 17.72.050.
8. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

DECISION

Based upon the above noted Findings and Fact and Conclusions, Conditional Use CUP 20-013 is hereby **APPROVED**, subject to the following Conditions of Approval.

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.

Chelan County Community Development


1. Pursuant to Cashmere Municipal Code Section 17.72.020, permits for conditional property uses shall be signed by the hearing examiner and shall stipulate restrictions or conditions which may include a definite time limit, provisions for a front, side or rear yard greater than the minimum requirements of the zoning ordinance, suitable landscaping, off-street parking, and any other reasonable restrictions, conditions or safeguards that would uphold the spirit and intent of the zoning ordinance and mitigate any adverse effect upon the neighborhood properties by reason of the use, extension, construction, or alteration allowed.
2. Pursuant to Cashmere Municipal Code Section 17.72.030, if not otherwise specified by the hearing examiner, conditional property use permits shall expire at the end of a period of one year from the time they are granted if the use for which the permit is granted is not established by that time.
3. Pursuant to Chelan County Code Chapter 11.86, the subject property contains erosive soils.
 - 3.1. The applicant submitted a geo assessment performed by Heath Geotechnical Services dated August 13, 2020.
4. The applicant shall submit a building permit that meets the requirement of the International Building Code and the International Fire Code for the accessory dwelling unit.
5. Pursuant to Cashmere Municipal Code Section 17.72.110(C), a notice to title shall be recorded prior to building permit issuance stating the property owner occupies either the primary residence or the accessory dwelling unit.
6. Pursuant to Cashmere Municipal Code 17.72.110(E), the accessory dwelling unit shall in no case exceed 900 square feet and shall not contain no more than 2 bedrooms. Additionally, the square footage of the accessory dwelling unit shall be no more than 50 percent of the area of the primary single family residence.
7. Pursuant to Cashmere Municipal Code 17.72.110(J), conversion of any accessory structure for use as an accessory dwelling shall meet all zoning standards.
8. Pursuant to RCW 27.53.020, if any Native American grave sites or archaeological resources are discovered or excavated, the owner/developer/contractor shall stop work immediately and notify Chelan County Department of Community Development and the Washington State Department of Archaeology and Historic Preservation in conformance with RCW 27.53.020.
9. Pursuant to Cashmere Municipal Code Section 17.72.040, the city administrator having charge of the enforcement of this code shall at any time have the right and duty to investigate complaints concerning the use of any structure or property or the continuance of the use of any structure or property in accordance with the provisions of this title covering conditional property uses. Upon his finding that the use or continued use of the premises is contrary to the provisions of this title establishing conditions for such use, the city attorney shall forthwith issue a cease and desist order prohibiting the use or continuance of the use of the premises for such purpose, and it shall be abated as a public nuisance. Any order of cease and desist issued by the city attorney provided in this section may be appealed in writing to the hearing examiner. Written notice of appeal must be filed with the city clerk-treasurer within 20 days after the issuance of the order.

Chelan County Public Works

10. The applicant would be required to obtain a Chelan County Approach Permit at time of building permit.

Approved this 17th day of September, 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.