

**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>CORRECTED FINDINGS OF FACT,</b>
AA 2020-007	)	<b>CONCLUSIONS OF LAW AND</b>
Brueske	)	<b>DECISION ON</b>
	)	<b>ADMINISTRATIVE APPEAL</b>

**I. FINDINGS OF FACT**

1. This is an Administrative Appeal of the Building Permit (BP) Denial for the Construction of a Single-Family Residence Addition, BP-200242.
2. The Appellant/Owners are Scott and Cathleen Brueske, and their agents are Todd Smith and Chelsea Courtney, Syndicate Smith.
3. Property Characteristics and Description: The subject property is located at 1401 Nighthawk Ridge Lane, Leavenworth, WA 98826 and is legally described as: T 24N R 18EWM S 07 PT SW Parcel 7 Survey 18/4. Tax Parcel No.: 24-18-07-310-000. The property is zoned as RR20.
4. The applicant submitted a building permit for a 3,550 sf. 3 bedroom, 3 bathroom single-family residence and 946 sf. covered porch/deck (BP-190282). The building permit was issued on May 3, 2019 and a building permit for a 982 sf garage (BP-190283) was also issued on May 3, 2019. Construction of these structures is currently underway. BP-200242 was submitted on April 29, 2020 for construction of three structures. According to the site plan, each structure is two stories and, again on the site plan, it is listed that they are approximately 1,685 sf. each. Each of the proposed structures would also have a separate deck. I would note that on the actual building permit, the Applicant indicates that the structures are 2,643 sf. on the main floor and 597 sf. on the second floor. Therefore the actual proposed size of each building is somewhat confusing. It indicates that there is 1,600 sf. of covered porches/decks and that they were proposing three additional bedrooms. They are proposing one bedroom in each structure along with one bathroom. It is very clear, based upon a casual observation of the proposed site plan, that each of these proposed new structures have the appearance of a standalone, separate dwelling unit. I should note that based upon the submitted site plans, that the proposed new structure closest to the "main house" is 20 ft. away and the second structure is approximately 75 ft. away from the "main house" and the third structure is approximately 99 ft. away from the "main house". According to the site plan, each structure is separated from adjacent structures by landscaping. A letter of Building Permit Denial was issued on October 1, 2020.

5. Throughout, at the beginning and end of, the building permit review of BP-200242, Community Development staff determined that the permit application did not constitute an addition to an existing family structure, but instead were three (3) new, freestanding and independent dwelling units. Per Chelan County Code (CCC) Section 11.88.010(1), only one primary residential structure is allowed per lot and also only one accessory dwelling unit that is up to 1,200 sf. in size is allowed per lot as defined in CCC Section 11.88.200
6. Pursuant to CCC Section 3.04.030(1), the Chelan County Hearing Examiner is designated as the Chelan County building code board of appeals. Appeals shall comply with CCC Section 14.12.010 and review of the appeal application shall be in accordance with CCC Section 14.10.040. There shall be no administrative appeal of a decision of the board of appeals and such decision shall be final and conclusive unless appealed to the superior court in accordance with CCC Section 14.12.020.
7. On May 3, 2019, a building permit application (BP-190282) for an SFR was submitted.
  - 7.1 The application proposed a NEW 3 BDRM 3 BATH SFR TO INCLUDE: 2849 SQ FT MAIN FLOOR; 701 SQ FT 2ND FLOOR; 946 SQ FT COVERED PORCHES/DECKS & 500 GAL PROPANE TANK.
  - 7.2 The permit was issued on July 31, 2019 and construction is currently underway with several inspections still required before the certification of occupancy can be issued.
8. On April 29, 2000, a building permit application (BP-200242) for what was characterized as an addition to the SFR was submitted.
  - 8.1 The application proposed a 3 BDRM 3 BATH ADDITION TO EXISTING SFR TO INCLUDE: 2643 SQ FT MAIN FLOOR; 597 SQ FT 2ND FLOOR; 816 SQ FT COVERED PORCHES/DECKS.
  - 8.2 The Site Plan for BP-200242 shows the existing main house and three separate structures, each labeled "Addition Room" that are connected to the main house via a "Continuous Connecting Structure" that is under four feet in height. The floor plans for these "Addition Room" structures show that each one is two stories tall and contains approximately 1,680 sf. of living space that includes a bedroom, and space that will likely be used as a kitchen (sink, refrigerator, and counter space for portable cooking appliances), a separate second story loft, a full bathroom, and also a private deck that can be used by the occupants. This kitchen area can certainly be used for multiple purposes, just like any kitchen area. However, given the other features of each structure (bedroom, bathroom, separate decks), and the distance from the main house it is clear that these structures may be used as separate dwelling units. Only one accessory dwelling unit is allowed on site per the Chelan County Code.
  - 8.3 The "Continuous Connecting Structure" is not shown to be a vertical load bearing structural component; it does not share a wall or a roof with either the main house or any of the "Addition Room"(s). There is nothing structurally connecting the main house with the 3 proposed new structures.
  - 8.4 The open space that surrounds each "Addition Room" appears to consist of ornamental landscaping including planted trees and manicured lawn.
9. On October 1, 2020, a building permit denial was issued by the Chelan County Building Official.

- 9.1 During the Building Department review, staff determined that the permit application of BP-200242 was not an addition to an existing family structure and that the submitted design was clearly for three (3) new, freestanding and independent “dwelling” and/or “dwelling unit(s)” as defined per the 2015 IRC (International Residential Code) Section R202; and furthermore defined as an “accessory dwelling unit” per Chelan County Code (CCC) Section 14.98.050, along with the definition of “dwelling unit” per CCC Section 14.98.625. The Hearing Examiner adopts this staff determination as a finding of fact.
- 9.2 Only one primary residential structure is allowed per lot (CCC Section 11.88.010(1)). One accessory dwelling unit may be allowed when it complies with code; however, it is unclear whether an accessory dwelling unit is already on the subject site. In such case, no additional accessory dwelling units would be allowed.
10. On October 12, 2020, an appeal of the building permit denial was submitted by Syndicate Smith LLC, the agent acting on behalf of the applicant.
11. Interpretation of 2015 International Residential Code, Section R202:
  - 11.1 Building shall mean any one- and two-family dwelling or portion thereof, including townhouses, that is used, or designed or intended to be used for human habitation, for living, sleeping, cooking or eating purposes, or any combination thereof, and shall include accessory structures thereto.
    - 11.1.1 The code uses this term to identify those structures that provide shelter for a function or activity. More specifically according to the code, a building is a single-family dwelling, a two-family dwelling, a townhouse or an accessory structure to such buildings. The use of a building, excluding an accessory structure, is human habitation, which specifically includes living, sleeping, cooking or eating.
  - 11.2 Dwelling is any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.
    - 11.2.1 A dwelling is a building that contains either one or two dwelling units. The purpose of a dwelling is occupation for living purposes, regardless of the manner of ownership. Single- family houses and duplexes fall under the definition of dwelling (see also “Dwelling unit”).
  - 11.3 A dwelling unit is a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
    - 11.3.1 The specific purpose of a dwelling unit is to provide the essential amenities necessary for complete and independent facilities. Commonly, dwelling units are thought of as single- homily houses or individual living units in duplexes or townhouses. There is no requirement that a dwelling unit have built in or major cooking appliances. Portable cooking appliances may also be used to prepare food.
  - 11.4 Structure is defined as that which is built or constructed.
    - 11.4.1 This definition is intentionally broad so as to include within its scope—and therefore the scope of the code (see Section R101.2)—everything that is built as an improvement to real property. See also the definition for “Building” for the difference between a building and structure.
    - 11.4.2 Per Chelan County Code Section 14.98.1825, “Structure” means that which is built, constructed, erected or any kind or any piece of work artificially built up or composed of parts joined together which requires location on the

- ground or attached to something having a location on the ground with the exception of retaining walls. Not included are structures or similar improvements less than four feet in height.
- 11.5 A townhouse is a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with a yard or public way on not less than two sides.
- 11.5.1 A configuration of three or more single-family dwellings attached together in a single structure constitutes a townhouse if all of the following conditions exist:
- 11.5.1.1 Each unit extends vertically from the foundation to the roof (townhouses cannot be stacked, though two-family dwellings can be),
- 11.5.1.2 Each unit is open to the exterior on at least two sides, providing some degree of independence from other units.
- 11.5.1.3 Not more than three stories in height above grade plan, and
- 11.5.1.4 Each unit must have independent egress to the exterior.
- 11.5.2 A townhouse structure that does not meet all of the preceding four criteria is regulated by the IBC, not the IRC. It should also be noted that townhouses within the IRC must be separated by a wall or walls meeting specific criteria. A townhouse structure could be built with any number of attached units on the same lot, or it could be developed such that a property line lies at each common wall separating dwelling units.
- 11.5.3 Per the District Use Chart in Chelan County Code Section 11.04.020, duplexes and multifamily dwellings are not allowed uses in the RR20 zoning district.
12. AA 2019-007, which was affirmed by the Hearing Examiner on January 14, 2020, upheld a previous determination made by Chelan County Community Development under AI 2019-003. This administrative interpretation (AI 2019-003) found that the use of an accessory structure as a sleeping facility fit the definition of a “Guest House”, as defined in Section 14.98.910 of the Chelan County Code. AI 2019-003 also determined that because Guest House is not a listed use in the District Use Chart in Section 11.04.020 of the Chelan County Code, the most similar listed use would be an Accessory Dwelling Unit. As a result, AI 2019-003 concluded that a “Guest House” would need to meet the standards associated with an Accessory Dwelling Unit. That decision is applicable to this matter.
- 12.1. Conclusions of Law in AA 2019-007 include the following:
- 12.1.1. The existence of sleeping accommodations in both a Guest House and an Accessory Dwelling Unit is the material similarity between those two uses.
- 12.1.2. A Guest House is most similar to an Accessory Dwelling Unit.
- 12.1.3. A bedroom (sleeping accommodation) is not allowed in the Chelan County Code as a stand-alone accessory use in a detached structure.
- 12.1.4. Accessory structures shall not be used as Dwelling Units.
- 12.1.5. Dwelling Units necessarily contain sleeping accommodations.
13. Chelan County Code Section 14.12.010: Administrative appeals.
- 13.1 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.
- 13.2 The notice of appeal shall contain a concise statement identifying:

- 13.2.1 (A) 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.
14. On November 18, 2020, a Determination of Complete was issued and sent to the owner and the owner's legal representation.
15. The building permit denial was issued on October 1, 2020.
16. The Appeal was submitted on October 12, 2020.
17. The Notice of Public Hearing was issued on January 9, 2021.
18. After due legal notice, an open record public hearing was held via Zoom video conference on January 20, 2021.
19. Admitted into the record were the entire Planning staff files for AA20-007, and BP-200242.
20. Appearing and testifying on behalf of the Appellant was Todd Smith. Mr. Smith testified consistent with the written appeal materials on file. Mr. Smith also read a four page statement into the record that was admitted as Exhibit 1. Mr. Smith did not deny that the area with the counter, refrigerator and sink could be used for cooking purposes. However, he said that as configured, it is not a kitchen or kitchenette.
- 20.1 The Hearing Examiner disagrees with this characterization. Each structure is clearly designed and capable of being used as a freestanding dwelling unit, separate from the "main house." But even if characterized as a "Guest House" they are still Accessory Dwelling Units as regulated in the Chelan County Code. Appellant's attempt to characterize these separate, freestanding structures located up to 99 feet away from the main house as "additions" fails factually and legally.
21. Mr. Smith also indicates that there is a pathway that connects the home with the other structures and it is this pathway that renders these proposed new structures as "additions" and not standalone dwelling units.
- 21.1 Again, the Hearing Examiner disagrees with the Appellant's position. First of all, the distance between the buildings is substantial and represents a plan that the structures are standalone, separate and distinct living spaces. The fact that a pathway connects these structures, the furthest away being approximately 99 feet from the "main house", cannot be construed simply as an "addition" merely because there is a pathway connecting the structures. There Hearing Examiner finds that there is no doubt that each of these structures could be lived in as a dwelling unit. While one of these structures may be allowed as an accessory dwelling unit, allowing all three of these structures is simply not authorized by the Chelan County Code.
22. As early as February 5, 2020, the Chelan County building official made it very clear to the Applicant that a contiguous structure is needed in order for the Applicant to build a proper "addition" and emailed examples to the Applicant.

23. No member of the public testified at the hearing.
24. 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 no authority to grant relief in equity, such as in waiver and estoppel.
2. The Hearing Examiner has been granted authority to render this Decision.
3. Per Chelan County Code (CCC) Section 11.88.010(1), only one primary residential structure is allowed per lot and also only one accessory dwelling unit that is up to 1,200 sf in size is allowed per lot as defined in CCC Section 11.88.200.
4. Per the District Use Chart in Chelan County Code Section 11.04.020, duplexes and multifamily dwellings are not allowed uses in the RR20 zoning district.
5. The Hearing Examiner finds that the proposed "Addition Room"(s) should be considered a stand-alone structure that is subject to the requirements for an Accessory Dwelling Unit as defined in Chelan County Code 11.88.170. .
6. The "Continuous Connecting Structure" noted on the plans is ornamental in nature and does not provide structural stability to either the main house or the "Addition Room"(s). Further, it does not meet the definition of a structure according to Chelan County Code Section 14.98.1825
7. Each "Addition Room" can be used as a separate residence due to the approximately 1,680 sf of living space that includes a bedroom with kitchen area, a separate second story loft, a full bathroom, a private deck and the distance from the main house. These structures meet the IBC definition of a dwelling unit because each one provides complete independent living facilities for one or more persons, which include provisions for living, sleeping, eating, cooking and sanitation
8. Sleeping accommodations are not allowed in the Chelan County Code as a stand-alone accessory use in a detached structure. An accessory dwelling unit is allowed in the RR20 zoning district, but are only allowed a total of 1,200 sf of living space and only allowed one per lot in conjunction with a single-family dwelling unit per Chelan County Code Section 11.88.200.
9. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

## III. DECISION

WHEREFORE, based upon the above Findings of Fact and Conclusions of Law, the Building Permit denial issued October 1, 2020, **IS HEREBY AFFIRMED** in all respects.

Dated this 3rd day of February, 2021.

CHELAN COUNTY HEARING EXAMINER

A handwritten signature in blue ink, appearing to read "Andrew L. Kottkamp", written over a horizontal line.

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.**

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