

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF
Rip V 2018-383 Hansen

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MAR 05 2021)

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

CHELAN COUNTY
COMMUNITY DEVELOPMENT

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on March 3, 2021, the Hearing Examiner having been directed by Court Order to approve this Riparian Variance, hereby submits the following Findings of Fact, Conclusions of Law and Decision as follows:

I. FINDINGS OF FACT

1. The applicants are Aaron and Rachel Hansen, 11515 Eagle Creek Rd., Leavenworth, WA 98826.
2. The location of the project is 11515 Eagle Creek Rd., Leavenworth, WA 98826.
3. The parcel number for the subject property is 25-18-31-120-100.
4. The property is legally described as Lot 1, as delineated on Leslie Tiedeman Short Plat No. 1322, Chelan County, Washington, recorded June 5, 1986, in Book SP-4, page 5.
5. The property is 2.54 acres according to SP 1322 and Chelan County Assessor's records.
6. The project is located outside of an Urban Growth Area.
7. The Comprehensive Plan designation and zoning for the subject property is Rural Residential/Resource - 1 Dwelling Unit per 2.5 acres (RR2.5).
8. The property is currently in residential and recreational use. The property is developed with a single family residence with attached deck.
9. Permits issued to the property include:
 - 9.1 BP 060109 for the single family residence with attached deck.
 - 9.2 BP 050781 for a 360 sq. ft. pole building.
 - 9.3 BP 090281 for a 697 sq. ft. pole building addition.
10. The property to the north of the subject property is Eagle Creek (Type F - fish bearing stream) and is zoned Rural Residential/Resource - 1 Dwelling Unit per 2.5 acres (RR2.5).
11. The property to the south of the subject property is in Residential and recreational use and is zoned Rural Residential/Resource - 1 Dwelling Unit per 20 acres (RR20).

12. The property to the east of the subject property is in Residential and recreational use and is zoned Rural Residential/Resource - 1 Dwelling Unit per 2.5 acres (RR2.5).
13. The property to west of the subject property is zoned Residential/Resource - 1 Dwelling Unit per 2.5 acres (RR2.5).
14. The Aquifer Recharge form was completed with the variance application. Pursuant to Chelan County Code (CCC), Section 1 1.82.060(2)(A), residential dwelling units and their accessory uses are exempt from the aquifer recharge area regulations under this chapter.
15. According to the Chelan County GIS Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the subject site contains riparian zones, a WDFW Class II Priority Habitat.
16. Eagle Creek, a type F stream runs through the property. Type F streams require a 150-foot setback from the OHWM. The applicant is seeking a riparian variance to reduce the riparian setback from 150 feet to approximately 80 feet from the OHWM, to accommodate expansion of the existing residence.
17. A stream typing was completed by Chelan County Natural Resource Department on November 6, 2018, which concluded there are no other streams, other than Eagle Creek, located on the subject property.
18. According to the National Wetlands Inventory (NWT) Map, prepared by the US Department of Fish and Wildlife Services, the subject site does not contain wetlands.
19. Pursuant to WAC 173-18-080, Eagle Creek is not a shoreline of the state. The CCSMP does not apply to this project.
20. According to the Federal Emergency Management Agency, FIRM panel # 5300150800A, there is no floodplain on the subject parcel. CCC, Chapters 11.84 and 3.20 do not apply to the project.
21. The County GIS data map has identified known geologically hazardous conditions on the subject site. Pursuant to CCC, Chapter 11.86, Geologically Hazardous Areas Overlay District, a geologic site assessment is required.
22. The Applicant has submitted a geologic site assessment, dated October 29, 2018. The Applicant would be required to comply with the recommendations outlined in this report.
23. There are no known cultural resources on the subject property. Pursuant to the RCW 27.53.060, 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.
24. The subject property is accessed by a 60-foot wide private access easement, as identified on the face of the recorded short plat. A 30-foot access easement extends from the 60-foot easement, and bisects the subject property, between the creek and the residence.

25. The site is served by an existing private well.
26. Power is provided by Chelan County PUD No. 1.
27. The site is served by an on-site septic system, assigned septic permit number 06-4T3B-0061.
28. The property is located within the boundaries of Fire District #3.
29. Visual impacts will be from the adjacent properties. Both adjacent properties contain single family residences and accessory structures. The expanded residence will be compatible with surrounding uses and development and will not create any substantial visual impacts.
30. The Notice of Application was referred to jurisdictional agencies, adjacent 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 December 5, 2018, with comments due December 19, 2018. The following agencies provided comments:
 - 30.1 Chelan County Fire Marshal responded on December 19, 2018
 - 30.2 Chelan-Douglas Health District responded on December 11, 2018
 - 30.3 WA State Department of Fish and Wildlife responded on December 28, 2018
 - 30.4 Chelan County Fire District #3 responded on December 5, 2018.
31. The following agencies were notified but did not respond:
 - 31.1 Chelan County Building Official
 - 31.2 Chelan County Public Works
 - 31.3 Chelan County PUD
 - 31.4 WA State Department of Natural Resources
 - 31.5 WA State Department of Ecology
 - 31.6 Department of Archaeology & Historic Preservation
 - 31.7 Yakama Nation
 - 31.8 Confederated Tribes of the Colville Reservation
32. No public comments were received.
33. Application materials were submitted on November 6, 2018.
34. A Determination of Completeness was issued on November 29, 2018.
35. The Notice of Application was issued on December 5, 2018.
36. The Notice of Public Hearing was provided on January 11, 2019, March 6, 2020 and February 20, 2021.
37. Pursuant to WAC 197-11-800(6)(6), variance applications that do not result in an increase in density are categorically exempt from the environmental review process.
38. In an Order dated February 10, 2021, the Chelan County Superior Court “orders and directs the County to grant and approve Petitioner’s variance application.”

39. An open record public hearing after legal notice was provided was held via Zoom on March 3, 2021.
40. The File of Record, Chelan County Department of Community Development Staff Report, and exhibits were received, admitted into the record and considered by the Hearing Examiner.
41. No member of the public testified at this hearing.
42. The Chelan County Hearing Examiner renders this decision as ordered by Chelan County Superior Court.
43. After the conclusion of the hearing, and upon inquiry by the Hearing Examiner, the Applicant, through their attorney, indicated they had no objection to the proposed conditions of approval.
44. 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 authority to render this Decision.
2. The Chelan County Superior Court has ordered that this application be approved.
3. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

III. 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 November 13, 2018.
2. Pursuant to CCC Section 11.95.040 and the International Building Code, Section 105, the applicant shall obtain a building permit construction of the residential addition.
3. Pursuant to CCC Section 11.14.020, the residence shall not exceed a building height of 35 feet.
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 Department of Community Development (CCCD) prior to issuance of a building permit.


5. Pursuant to Chelan County Code Section 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.
6. Pursuant to Chelan County Code Section 11.88.190, no construction activity shall be permitted within one thousand feet of an occupied residence between the hours of ten p.m. to seven a.m.
7. Pursuant to RCW 27.53.060, 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.
8. 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.
9. 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.
10. 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.

IV. DECISION

Based upon the above noted Findings and Fact and Conclusions, Rip V 2018-383, is hereby **APPROVED**.

Dated this 4th day of March, 2021.

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

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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.