

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)	
)	
VAR 21-087)	FINDINGS OF FACT,
Ward)	CONCLUSIONS, DECISION
)	AND CONDITIONS OF
)	APPROVAL

THIS MATTER, having come on before the Chelan County Hearing Examiner on June 2, 2021. The Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. This is an application to vary the setback from the front property line from 55 feet to 40 feet from the centerline of E. Leavenworth Road in order to construct a barn and preserve riparian buffer function by minimizing the necessary riparian impacts.
2. The owner is Kathleen Ward, 8544 E. Leavenworth Road, Leavenworth, WA 98821 and the agent is Suzanne Tomassi – Avia Environmental, 150 S. Franklin Ave., Wenatchee, WA 98801.
3. The project location is 8544 E. Leavenworth Road, Leavenworth, WA.
4. The parcel number of the subject property is 24-17-13-310-100.
5. The legal description of the subject property is: Parcel A of BLA No. 2008-161, recorded December 30, 2008 under Auditor’s File No. 2295217.
6. The subject property is located outside of an Urban Growth Area.
7. The Comprehensive Plan designation is Rural Residential/Resource 10 (RR10).
8. The zoning designation is Rural Residential/Resource 10 (RR10).
9. The applicant resides in a single-family residence located on the property.
10. The subject property is vegetated with lawn areas in the front and rear of the house, low native vegetation to the south and native scrub-shrub and forest within and adjacent to Icicle Creek, which flows along the western property boundary.
11. The site size is 3.69 acres.
12. The property to the north is residential and is zoned Rural Residential/Resource 10 (RR10).
13. The property to the south is residential and is zoned Rural Residential/Resource 10 (RR10).

14. The property to the east is E. Leavenworth Road and is zoned Rural Residential/Resource 5 (RR5).
15. The property to the west is Icicle Creek.
16. The Aquifer Recharge is exempt pursuant to Chelan County Code Section 11.82.060(2)(A).
17. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species Maps, the subject property does contain identified riparian zones and wetlands. Therefore, the provision of Chelan County Code (CCC) Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do apply.
18. Pursuant to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property contains wetlands associated with Icicle Creek. However, a wetland investigation by Avia Environmental on December 16, 2019 determined that the wetland boundaries are entirely within the Ordinary High Water (OHW) of Icicle Creek. Pursuant to Section 6.1.3.3 of the Chelan County Shoreline Master Program (CCSMP), in the event that multiple buffers for shoreline or critical areas are contiguous or overlapping, the landward-most edge of all such buffers shall apply. Therefore, based on the site plan of record, the shoreline buffer associated with Icicle Creek shall apply and the provisions of CCC Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.
19. The subject property is within the jurisdiction of the CCSMP. Therefore, the provisions of the CCSMP do apply. This reach of Icicle Creek is within the Conservancy jurisdiction and has a setback of 100 feet from the OHW of Icicle Creek. This setback from the OHW of Icicle Creek was reduced to 85 feet per SAD 20-019. The proposed barn is to be located more than 85 feet from the OHW of Icicle Creek; therefore, the provisions of the CCSMP do not apply.
20. Pursuant to the Federal Emergency Management Agency, FIRM Panel No. 5300150800A, the subject property is within identified flood hazard; therefore, the provisions of CCC Chapters 11.84 Frequently Flooded Areas Overlay District and CCC 3.20 Flood Hazard Development do apply. Either a Flood Elevation Certificate or a Floodplain Development Permit will be required at the time of building permit application.
21. Pursuant to CCC Chapter 11.86, the subject site does contain erosive soils. Therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District do apply. A geologic site assessment will be required at the time of building permit application.
22. No comment was received from any of the Tribes or from DAHP. Although the proposed development lies in an area with no historic or prehistoric sites, staff recommended a Condition of Approval that an inadvertent discovery plan would be required at time of building permit submittal. Pursuant to RCW 27.53.020, full cooperation among the Department of Archaeology and Historic Preservation and other agencies is required to ensure information regarding the possible impact of construction activities on the state's archaeological resource is maintained. Staff recommended notification if any artifacts are uncovered or discovered during the development of the proposed variance.
23. Construction Phasing/Timing: Construction would commence once the variance is approved and a building permit is issued.

24. Water: The subject property would be provided water by the City of Leavenworth.
25. Sanitation: Private septic system (Septic Permit # 04-1AT4B-0019).
26. Power: Chelan County PUD.
27. Fire protection: The property is located within Chelan County Fire District #3.
28. The subject property is accessed directly from E. Leavenworth Road, a public road.
29. Noise: Similar to other residential uses along E. Leavenworth Road.
30. Visual impacts: Similar to other residential uses. The proposed barn shall be placed on the property similar to other accessory structures in the area.
31. The Notice of Application was referred to surrounding property owners within 300 feet (excluding 60 feet of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on April 1, 2021 with comments due April 15, 2021. Agency comments are considered in the decision and, when appropriate, associated recommended Conditions of Approval.
32. The following are agencies that were notified:

Agencies Notified	Response Date	Nature of Comment
Chelan County Building Official	4/9/2021	The parcel is located in Special Flood Hazard Area Zone AE, so a Flood Development Permit will be required, and the proposed Barn would have to be designed and constructed accordingly.
Chelan County Fire Marshal		No comment received.
Chelan County Public Works	4/5/2021	Public Works does not object to the above referenced variance request. However, the applicant will need to submit and record a Hold Harmless Agreement, that holds the County harmless for any potential damage to the proposed structure due to any road maintenance, plowing and/or construction.
Fire District #3		No comment received.
WA State Dept. of Archaeology and Historic Preservation		No comment received.
Yakama Nation		No comment received.

Confederated Tribes of Colville		No comment received.
Chelan-Douglas Health District	4/14/2021	<p>Recommends further approval with the following conditions:</p> <ul style="list-style-type: none"> • The proposed location of the barn impacts the existing drainfield of the permitted septic system. The structure of the barn must be at minimum 10 feet from the drainfield. • If the location of the barn is to remain, then a septic repair permit will be required from CDHD and a new drainfield will be required meeting the required setbacks from the barn.
Chelan County PUD		No comment received.
Washington Department of Fish and Wildlife		No comment received.

33. No public comment letters were received.
34. Pursuant to WAC 197-11-800(6)(b), variance requests that do not result in an increase in density are categorically exempt from the environmental review process.
35. The application materials were submitted on March 4, 2021.
36. A Determination of Completeness was issued on March 30, 2021.
37. The Notice of Application was provided on April 1, 2021.
38. The Notice of Public Hearing was provided on June 2, 2021.
39. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Rural Residential/Resource 1 Dwelling Unit per 10 Acres (RR10) for consistency with the proposed development which permits residential uses. Chelan County Comprehensive Plan, Chapter 3 page 8, states the purpose of the Rural Residential/Resource 10 (RR10) designation is to “allow for rural development, forestry and agricultural uses consistent with the rural character and rural development provisions outlined in the goals and policies of the comprehensive plan. These areas can function as areas of transition between resource lands and areas of more intense rural or urban development. These areas also provide opportunities for protecting sensitive environmental areas and creating open space typical of a rural setting. RR10 designations are intended to encourage the preservation of rural areas until such time as they serve as urban growth areas and urban services become available. RR designations can also act as buffers between designated resource lands and more intense rural or urban development.”
40. 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 and Goal NS 2 of the Resource Element: Encourage retention of the scenic character

and environmental quality of the Icicle Valley. The Hearing Examiner finds that the project, as conditioned, is consistent with the Comprehensive Plan.

41. Chelan County Code, Chapter 11.04 District Use Chart:
 - 41.1 The proposed development is associated with the RR10 zoning district, which allows accessory structures as a permitted use.
 - 41.2 The proposed use is consistent with Chelan County Code.
42. Chelan County Code, Section 11.10.020 Standards:
 - 42.1 All development in this zone shall meet the applicable provisions of the CCC, including, but without limitation the following:
 - 42.1.1 (5)(A) Front yard: twenty-five feet from the front property line or fifty-five feet from the street centerline, whichever is greater.
 - 42.1.2 (5)(B) Rear yard: twenty feet from the rear property line.
 - 42.1.3 (5)(C) Side Yard: five feet from the rear property line.
 - 42.2 The requirement of 55 feet from the street centerline is greater than 25 feet from the front property line; therefore, this provision applies. The applicant is requesting to reduce the required front yard setback of 55 feet to 40 feet from the street centerline. The parcel is along the shoreline of Icicle Creek and contains a regulatory shoreline buffer. The applicant seeks a road setback reduction of 15 feet to preserve riparian buffer function and minimize riparian impacts.
 - 42.3 Hearing Examiner Finding: The applicant has applied for a zoning variance to reduce the front yard setback from the required 55 feet from the street centerline to 40 feet from the street centerline. According to the submitted site plan, the existing setback from the OHW of Icicle Creek is 85 feet per Shoreline Administrative Determination (SAD) 20-019. By reducing the front yard setback, the applicant will be able to place the barn further away from Icicle Creek and limit disturbance to the existing riparian vegetation.
43. Chelan County Code, Chapter 11.95 Variances - 11.95.030 Evaluation criteria:
 - 43.1 No variance shall be granted unless it can be shown that all of the following conditions exist:
 - 43.1.1 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.
 - 43.1.1.1 The applicant is proposing a 30-foot by 40-foot barn to house chickens and a horse, and keep a work bench, tools, and residential garden and lawn equipment. Properties to the north and south are in agricultural development and state-owned open space.
 - 43.1.1.2 The applicant is requesting to reduce the front yard setback which abuts E. Leavenworth Road. The applicant is seeking the reduction in order to build a barn, while preserving native riparian vegetation existing on the property.
 - 43.1.1.3 Hearing Examiner Finding: This variance would not constitute a special privilege as the nearby properties within the RR10 zoning designation have larger lots in relation to the shoreline buffer setbacks

of Icicle Creek as compared with the subject property. In addition, the meander of Icicle Creek, the existing shoreline buffer, and the location of E. Leavenworth Road limit the placement of the proposed barn in other areas of the subject property.

- 43.1.2 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.
 - 43.1.2.1 The existing lot appears to have development limitations due to the existing shoreline buffer. The required shoreline buffer setback from Icicle Creek make it difficult to place a footprint for a barn in other areas of the property. Without the granted variance, the applicant would need to remove existing riparian vegetation from within the shoreline buffer in order to build the proposed barn.
 - 43.1.2.2 Hearing Examiner Finding: The plight of the applicant is in part due to the existing shoreline buffers together with the lot being created prior to adoption of current zoning and shoreline regulations.
- 43.1.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
 - 43.1.3.1 The subject property was created through the recording of a boundary line adjustment in 2008 that was completed by a previous property owner and occurred prior to the adoption of the current County code and Shoreline Master Program regulations.
 - 43.1.3.2 Hearing Examiner Finding: The subject property contains numerous wetlands and riparian lands associated with Icicle Creek and is constrained by the shoreline buffer of Icicle Creek, which limits the placement of the proposed structure without impacting these natural areas. The hardship does not appear to be the result of the owner's actions.
- 43.1.4 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.
 - 43.1.4.1 The authorization of this variance would not be materially detrimental to the purposes of Title 11 of the CCC. In addition, the authorization of this variance would promote the goals and objectives of the Chelan County Comprehensive Plan. Goal CL 1 and Goal NS 2 of the Resource Element found within the Comprehensive Plan that address conserving natural areas within Chelan County, especially along Icicle Creek.
 - 43.1.4.2 Hearing Examiner Finding: The authorization of this front yard variance would allow further development of the property without impacting the riparian vegetation within the shoreline buffer of Icicle Creek. The proposed development of a barn is similar to other uses and structures within the same zoning district and neighborhood. Chelan County Code Chapter 11.04 District Use Chart permits agricultural structures within the RR10 zoning district. The issuance of this

variance would not be injurious to property in the same neighborhood. The authorization of this variance would promote the goals and objectives of Title 11 of the CCC as well as the Chelan County Comprehensive Plan.

43.1.5 The hardship asserted by the application results from the application of this title to the property.

43.1.5.1 As previously stated, the subject property was created prior to current code regulations for zoning and the CCSMP. Per CCC Section 11.10.020, a front yard setback of 55 feet from the street centerline is required. Due to the shoreline buffer constraints that exist on the property, the buildable area on the subject property is limited unless disturbance to the riparian vegetation within the shoreline buffer is proposed. By reducing the front yard setback by 15 feet instead of disturbing vegetation within the shoreline buffer, the applicant meets several goals outlined in the Chelan County Comprehensive Plan.

43.1.5.2 Hearing Examiner Finding: The hardship is a result of the application of the CCC to the subject property based on property specific conditions, which does not factor in the CCSMP regulations or historically created parcels.

44. An open record public hearing was held via Zoom on June 2, 2021.
45. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
46. Suzanne Tomassi, agent for the applicant, appeared and testified that the applicant had no objection to the proposed conditions of approval. Ms. Tomassi agreed that there would be absolutely no residential use (dwelling use) of the barn. She testified that without the requested variance, the size of the barn would be limited to 600 sq.ft.
47. The Hearing Examiner finds that in this specific circumstance, a 600 sq.ft. barn is not a reasonable size.
48. No member of the public appeared at this hearing.
49. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
50. 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 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.

III. DECISION

Based upon the above noted Findings and Fact and Conclusions of Law, VAR 2021-087 is hereby **APPROVED**, subject to the conditions noted below.

IV. 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. 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.
2. The development shall be in compliance with the Chelan County Zoning Resolution, in addition to all other applicable local, state and federal regulations.
3. The development shall proceed in substantial compliance with the application and site plan of record date stamped March 4, 2021.
4. 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.
5. Pursuant to CCC Section 11.95.060, the granting of a variance and the conditions set forth runs with the land; compliance with conditions of the variance is the responsibility of the current owner of the property, whether that is the applicant or a successor.
6. 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.
7. Pursuant to CCC Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.
8. Pursuant to CCC Section 11.84.020, either a Flood Elevation Certificate or a Floodplain Development Permit will be required at the time of building permit application.

9. Pursuant to CCC Section 11.86.020, a geologic site assessment shall be required at the time of building permit application.
10. Pursuant to CCC Section 11.88.190, no construction activity shall be permitted within one thousand feet of an occupied residence between the hours of 8:00 p.m. to 6:00 a.m., Monday through Friday, and 8:00 p.m. to 7:00 a.m. on weekends.
11. Pursuant to RCW 27.53.060, if any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.
 - 11.1. An inadvertent discovery plan shall be submitted with the building permit application and kept onsite during all land disturbing activities.
12. Pursuant to comments received from Chelan County Public Works on April 5, 2021, the applicant will need to submit and record a Hold Harmless Agreement, that holds the County harmless for any potential damage to the proposed structure due to any road maintenance, plowing and/or construction.
13. Pursuant to comments received from the Chelan Douglas Health District on April 14, 2021, the structure of the barn must be at minimum 10 feet from the drainfield, or if the location of the barn is to remain, then a septic repair permit will be required from CDHD and a new drainfield will be required meeting the required setbacks from the barn.
14. Chelan County is not responsible for notification or enforcement of covenants or deed restrictions affecting use or title. Any permit issued does not acknowledge or recognize any covenants or deed restrictions or reservations that may burden or otherwise affect this property. Applicant/owner assumes all risks and liability for any claims and liabilities for covenants or deed restrictions or reservations.
15. There shall be no residential/dwelling use within this barn structure. This includes all residential/dwelling uses, including accessory dwelling units.

Dated this 3 day of June, 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 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.