

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF	)	
	)	
VAR 20-005	)	FINDINGS OF FACT,
Don Feil Holdings, LLC	)	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 Kona Street from 55 ft. from centerline to 48 ft. from the centerline, vary the setback from Monterey Drive from 55 ft. from the centerline to 53 ft. from the centerline and to vary the side yard setback from 5 ft. to 3 ft. to construct a single-family residence on the property.
2. The owner is Don Feil Holdings, LLC, 2115 North Ashland, East Wenatchee, WA 98802.
3. The project location is 2990 Monterey Drive, Malaga, WA 98828.
4. The parcel number of the subject property is 22-21-29-879-430.
5. The legal description of the subject property is: Three Lakes No 2., Block 5, Lot 9, and is 0.15 acres.
6. The subject property is located outside of an Urban Growth Area.
7. The Comprehensive Plan designation is Rural Recreation/Residential (RRR).
8. The zoning designation is Rural Recreation/Residential (RRR).
9. The subject property is currently residential vacant land.
10. The subject property is flat and is vegetated with dry grassland.
11. The parcel site size is 0.15 acres.
12. The property to the north is in residential and agriculture use and is zoned Rural Recreation/Residential (RRR).
13. The property to the south is Monterey Drive and Kona Street Intersection, and zoned Rural Recreation/Residential (RRR).

14. The property to the east is Kona Street, is in residential use, and is zoned Rural Recreation/Residential (RRR).
15. The property to the west is Monterey Drive in residential use and zoned Rural Recreation/Residential (RRR).
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 not contain identified habitat areas. Therefore, the provisions of Chelan County Code Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.
18. The subject property is not within the jurisdiction of the Chelan County Shoreline Master Program (CCSMP). Therefore, the provisions of the CCSMP do not apply.
19. Pursuant to the Federal Emergency Management Agency, FIRM Panel No. 5300150450B on the subject property is outside of identified flood hazard. Therefore, the provisions of Chelan County Code Chapters 11.84 Frequently Flooded Areas Overlay District and CCC 3.20 Flood Hazard Development do not apply.
20. Pursuant to Chelan County Code Chapter 11.86, the subject property does contain geological hazards. Therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District do apply. A geologic site assessment would be required at the time of building permit application.
21. Pursuant to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property does not contain a wetland area. Therefore, the provisions of Chelan County Code Chapter 11.80 Wetland Areas Overlay District do not apply.
22. Based on the comment letter from the Confederated Tribes of Colville (dated March 4, 2021), the proposed development lies in an area with no historic or prehistoric sites. The Hearing Examiner sets as a Condition of Approval that an inadvertent discovery plan 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. The Hearing Examiner sets as a Condition of Approval 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 Three Lakes Water District.
25. Sanitation: The subject property is proposing an on-site septic system.
26. Power: Chelan County PUD.
27. Fire protection: The property is located within Chelan County Fire District #1.

28. Noise: Noise from construction, typically associated with a single-family residence. Construction noise is regulated by CCC, Section 11.88.190, which states no construction activity shall be permitted within one thousand feet of an occupied residence between the hours of 10:00 p.m. to 7:00 a.m.
29. Visual impacts: The proposed single-family residence would be of a similar size and design as the existing residences in the vicinity.
30. 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 February 12, 2021 with comments due February 27, 2021. Agency comments are considered and, when appropriate, associated recommended Conditions of Approval. The following summarizes responding agencies:
31. The following are agencies that were notified:

Agencies Notified	Response Date	Nature of Comment
Chelan County Fire Marshal		No Comment
Chelan County Public Works		No Comment
Chelan County Building Official	February 16, 2021	If any encroachment into the required setbacks are less than 5 feet from the property line that portion of the structure must comply with IRC Table R302.1(1) for exterior walls.
Fire District #1		No Comment
WA State Dept. of Archaeology and Historic Preservation		No Comment
Yakama Nation		No Comment
Confederated Tribes of Colville	March 4, 2021	The subject property is in close proximity to several significant archaeological and traditional sites. Standard discovery clauses should be applied.
Chelan-Douglas Health District		No Comment
Chelan County PUD		No Comment
WA State Dept. of Ecology		No Comments

32. No public comment letters were received.

33. 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.
34. The application materials were submitted on December 28, 2020.
35. A Determination of Completeness was issued on February 4, 2021.
36. The Notice of Application was provided on February 13, 2021.
37. The Notice of Public Hearing was provided on May 22, 2021.
38. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Rural Recreation/Residential (RRR) designation for consistency with the proposed development which permits residential uses. The Hearing Examiner finds that the development, as conditioned, is consistent with the Comprehensive Plan.
39. Chelan County Code, Chapter 11.04 District Use Chart:
  - 39.1 The proposed development is associated with the Rural Recreation/Residential (RRR) zoning district, which permits single-family dwelling units.
  - 39.2 The proposed use is consistent with Chelan County Code.
40. Chelan County Code, Section 11.18.020 Standards:
  - 40.1 The applicant is requesting a zoning variance to vary the required front yard setback of 55 ft. from the centerline of Kona Street to 48 ft., vary the required front yard setback of 55 ft. from the centerline of Monterey Drive to 53 ft., and vary the required side yard setback of 5 ft. to 3 ft. The maximum lot coverage is 35 percent, however, when setbacks are applied, the only buildable area without the zoning variance is approximately 23 percent of the lot.
  - 40.2 The applicant is requesting to vary the front and side yard setbacks on the corner lot. The buildable area is significantly less than the allowed maximum lot coverage percentage when setbacks are applied. The entirety of the foundation for the proposed single-family residence is within the required front and side yard setbacks. Elements of the proposed single-family residence encroach into the require setbacks by no greater than 7 ft.
41. Chelan County Code, Section 11.88.140 Projections from Buildings:
  - 41.1 The applicant is requesting a zoning variance to encroach into the front and side yard setbacks for the construction of a single-family residence. The elements of the proposed development that encroach into the required setbacks are the fireplace, cantilevered second and third stories, a covered porch, and an exterior staircase. The provisions in this section allow for cornices, eaves, gutters, and sunshade features to project a maximum of 2 ft. into the required yard setbacks and for projections for foundation support.
  - 41.2 The elements of the proposed development that encroach into the required setbacks do not meet the provisions of this section; therefore, the variance would be necessary to construct the single-family residence as proposed.
42. Chelan County Code, Chapter 11.95 Variances - 11.95.030 Evaluation criteria:
  - 42.1 No variance shall be granted unless it can be shown that all of the following conditions exist:
    - 42.1.1 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.42.1.3 The proposed variance is based on the application of the Chelan County critical areas ordinance of Title 11 as it relates to the associated riparian buffers as well as zoning setback requirements of the RR2.5 zoning district.

42.1.1.1 The applicant is requesting a zoning variance to facilitate construction of a three-story 1,562 sq. ft. single-family residence on the property.

42.1.1.2 Hearing Examiner Finding: The proposed single-family residence would be of similar size and design as the surrounding residences; therefore, this variance would not constitute a special privilege.

42.1.2 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.

42.1.2.1 The existing lot is on the corner of Monterey Drive and Kona Street which require 55-foot setbacks from the centerlines. The required setbacks cover approximately 77 percent of the total lot area. Additionally, the buildable lot area of 832 sq.ft. is significantly smaller than the buildable area of the surrounding properties.

42.1.2.2 Hearing Examiner Finding: The plight of the applicant is due to the lot size and shape, which create a relatively small buildable area of which the applicant has no control.

42.1.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.

42.1.3.1 Due to the lot size, shape, and current zoning requirements for setbacks on a lot with double frontage, the buildable area of the lot is significantly reduced. While the entirety of the proposed foundation is within the required setbacks, there are elements of the design that would encroach on the setbacks in order to construct a residence of similar size and design of the surrounding residences.

42.1.3.2 Hearing Examiner Finding: The hardship does not appear to be the result of the owner's actions.

42.1.4 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.

42.1.4.1 The authorization of this variance would not be materially detrimental to the purpose of Title 11. This variance would promote the goals and objectives of Title 11 and the comprehensive plan. The proposed development for a single-family residence is similar to other uses and structures within the same zoning district and neighborhood. Chelan County Code Chapter 11.04 District Use Chart permits single-family residences with the Rural Recreation/Residential zoning district. The

issuance of this variance to allow for the construction of the proposed single-family residence would not be injurious to property in the same neighborhood, or negatively impact the health and safety of the neighborhood, as the surrounding properties are developed with single-family residences of similar size and design.

42.1.4.2 Hearing Examiner Finding: The authorization of this variance would promote the development of the subject property for a new single-family residence and would not be injurious to property in the same neighborhood. The applicant is requesting approval of the preservation of a property right that is the same as is enjoyed by other properties in the neighborhood. The authorization of this variance would promote the goals and objectives of Title 11 and the comprehensive plan.

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

42.1.5.1 The application of the setback requirements results in a significantly reduced buildable area due to the lot size and shape of the subject property. Additionally, the Three Lakes Country Club Estates Division No 2 plat was approved and recorded by Chelan County in 1966, which is prior to the adoption and implementation of the zoning regulations per the current Chelan County Code.

42.1.5.2 The hardship is a result of the lot size, shape, and the application of the Chelan County Code to the subject property based on property specific conditions.

43. At the open record public hearing it was disclosed to the Hearing Examiner that there was actually a plat note for the plat that created this lot stating, "no building shall be located nearer than 25' to front and side street line." The Hearing Examiner questioned whether or not a plat alteration was necessary. The Planning Dept. staff indicated that because the encroachments were very small, and because the building footprint is within the required setback areas, that a plat alteration was not required.
44. After studying this issue, the Hearing Examiner agrees with staff in that the building footprint is the controlling factor. Because the entire footprint is within the setback area, no plat alteration is required.
45. The application and site plan submitted December 28, 2020 identify the proposed location of the single-family residence and appurtenant structures. Due to the application of the required front and side yard setbacks, the buildable area of the subject property is significantly reduced. Construction of a single-family residence that is comparable in size and design to the existing residences on the surrounding properties would not be possible without the granting of the requested variance. The proposed single-family residence and appurtenant structures encroach into the required front yard setback of 55 ft. from the street centerline of Monterey Drive by 3 ft. and Kona Street by 7 ft., and encroach into the required 5-foot side yard setback by 2 ft.
46. An open record public hearing was held via Zoom on June 2, 2021.

47. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
48. Appearing and testifying for the Applicant was Brad Saurbeer. Mr. Saurbeer testified that he was an agent for the Applicant and was authorized to appear and speak on behalf of the property owner and Applicant. Mr. Saurbeer testified that above grade height of the structure would be 25'. This is because the lower level, the garage, would be built below grade. Mr. Saurbeer further confirmed that the foundation would be entirely located within the required setback areas.
49. Also testifying on behalf the Applicant was Rick Simon. Mr. Simon testified that he also was an agent authorized to appear and speak on behalf the property owner. He indicated that the triangular size of this lot created a hardship for the Applicant because the proposed home is not also triangular in size, there would be pockets of "buildable space" that are not usable space because the proposed building is not also triangular. He also testified that both Kona and Monterey Streets have unused right-of-way.
50. Finally, Mr. Saurbeer testified that the Three Lakes Estates Architectural Control Committee had approved the plans by the Applicant, including the proposed variances.
51. The original plat map, as well as the November 12, 2020, email from Lars Peterson, Three Lakes Estates Architectural Control Committee Chairperson to Ms. Brown, on behalf of the Applicant, indicating the Three Lakes Estates agreement to the Applicant's proposal.
52. At the conclusion of the hearing, the Hearing Examiner was notified that a member of the public was having technical problems and could not access the Zoom hearing and may wish to make written comments. The Hearing Examiner kept the record open until 5:00 p.m. June 2, 2021, for this additional written comment. No written comment was submitted and therefore the record was closed on June 2, 2021.
53. No member of the public appeared at this hearing.
54. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
55. 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 20-005 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. The development shall be in compliance with the Chelan County Zoning Resolution, in addition to all other applicable local, state and federal regulations.
2. The development shall proceed in substantial compliance with the application and site plan of record date stamped December 28, 2020.
3. Pursuant to Chelan County Code 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.
4. Pursuant to Chelan County Code 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.
5. Pursuant to Chelan County Code 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.
6. Pursuant to Chelan County Code Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.
7. Pursuant to Chelan County Code Section 11.86.020, a geologic site assessment shall be required at the time of building permit application.
8. 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 8:00 p.m. to 6:00 a.m., Monday through Friday, and 8:00 p.m. to 7:00 a.m. on weekends.
9. Pursuant to RCW 27.53.060, the owner/developer/contractor shall contact the Confederated Tribes of the Colville Reservation and the Washington State Department of Archaeology and Historic Preservation 10 days prior to any ground disturbing activities in order for an agency



representative to be present on site. If any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.

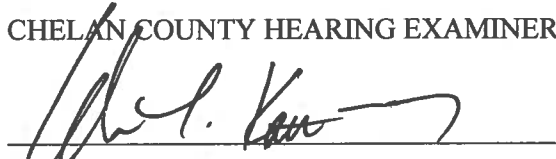
- 9.1. An inadvertent discovery plan shall be submitted with the building permit application and kept onsite during all land disturbing activities.
10. Chelan County is not responsible for notification or enforcement of covenants or deed restrictions affecting use or title. Any permit issued does not 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.

**CHELAN COUNTY BUILDING OFFICIAL**

11. The subject property and variance shall conform to the comments and conditions of approval as found in the Chelan County Building Official's agency comment response dated February 16, 2021.

Dated this 4 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.