

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)

VAR 21-056)

Zinni)

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

THIS MATTER, having come on before the Chelan County Hearing Examiner on August 4, 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 for a variance submitted in order to reduce the required front yard and rear yard setbacks of the subject property for the future construction of a residence and accessory structure of unknown sizes. The variance request is to vary the setback from the front property line from 55 ft. to 45 ft, from the centerline of SR 150 and vary the rear setback from 20 ft. to 5 ft.
2. The owners are Joseph and Glenna Zinni, PO Box 998, Manson, WA 98831. The agent is Erlandsen, 105 N Emerson St., Suite 203, Chelan, WA 98816.
3. The project location is NNA SR 150, Manson, WA.
4. The parcel number of the subject property is 28-22-32-680-029.
5. The legal description of the subject property is: Lot 1 as delineated on Johnson Short Plat No. 955, April 29, 1983, in Book SP-1 of Short Plats, Page 32, Chelan County, Washington.
6. The subject property is not located within an Urban Growth Area (UGA).
7. The Comprehensive Plan and zoning designations are Rural Waterfront (RW).
8. The property is currently vacant, but has a graveled parking area.
9. The subject property is flat and vegetated with native and non-native vegetation. The site size is 0.19 acres (8,276 sq. ft.).
10. The property to the north is SR 150 and is zoned Commercial Agricultural Lands (AC).
11. The property to the south is Residential and is zoned Rural Waterfront (RW).

12. The property to the east is Residential and is zoned Rural Waterfront (RW).
13. The property to the west is Kalian Lane and is zoned Rural Waterfront (RW).
14. The application is exempt from Aquifer Recharge regulations pursuant to Chelan County Code Section 11.82.060(2)(A).
15. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species Maps, the subject property does not contain any known critical habitats. Therefore, the provision of Chelan County Code (CCC) Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.
16. The subject property is not within the jurisdiction of the CCSMP. Therefore, the provisions of the CCSMP do not apply.
17. Pursuant to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property does not contain wetlands. Therefore, the provisions of CCC Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.
18. Pursuant to the Federal Emergency Management Agency, FIRM Panel No. 5300150225A, the subject property is not 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 not apply.
19. Pursuant to CCC Chapter 11.86, the subject site does not contain any geologically hazardous areas. Therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District do not apply.
20. Although the proposed development lies in an area with no historic or prehistoric sites. The Hearing Examiner is setting as 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. The Hearing Examiner requires notification if any artifacts are uncovered or discovered during the development of the proposed variance.
21. Construction may commence once the variance is approved and building permits are issued.
22. The subject property is accessed directly from Kalian Lane, a private easement that was granted on the previously recorded Johnson Short Plat No. 955.
23. Domestic water and sanitation is provided by the Lake Chelan Reclamation District.
24. Power is supplied by the Chelan County PUD.
25. The property is located within Chelan County Fire District #5.
26. Noise: Similar to other residential uses along SR 150. The development must comply with CCC, Chapter 7.35 Noise and RCW 70.107.

27. The proposed home and garage would be placed on the property similar to other residential structures in the area.
28. The Application was submitted on February 10, 2021 and the Determination of Completeness was issued on April 1, 2021. The Notice of Application was referred to surrounding property owners within 300 ft. (excluding 60 ft. 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. The Notice of Public Hearing was published on July 24, 2021. Several public comments were received. Agency comments are considered in the decision and, when appropriate, associated Conditions of Approval. The following summarizes responding agencies:

Agencies Notified	Response Date	Nature of Comment
Chelan County Building Official	4/7/2021	No concerns regarding request.
Chelan County Fire Marshal		No comment received.
Chelan County Public Works	4/5/2021	No comment on variance request.
Washington State Department of Transportation		No comment received.
Fire District #5	4/2/2021	Fire flow is adequate and no alternate fire flow provisions are necessary.
WA State Dept. of Archaeology and Historic Preservation		No comment received.
Yakama Nation		No comment received.
Confederated Tribes of Colville	5/10/2021	Although there is an archaeological site on or adjacent to the subject property, an inadvertent discovery plan is adequate.
Chelan-Douglas Health District		No comment received
Chelan County PUD		No comment received.
Manson Community Council	4/15/2021	The Manson Community Council recommends denial of variance request because they believe the applicant does not meet the criteria for needed for a variance and granting one would be giving applicant special privilege.

29. The following public comments were received:

Public Comments	Response Date	Nature of Comment
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Carolyn Johnson	4/7/2021	Setbacks requested are not consistent with the area and will hinder access to SR 150.
Peter Storaasli	4/5/2021	In favor of granting the variances because of the small building envelope existing on property and grants them same allowances as surrounding properties.
Michelle Dauphiny and Chris Becker	4/7/2021	Reducing setbacks from SR 150 will reduce visibility and also questions future sanitation allowances for the subject property.

30. Pursuant to WAC 197-11-800(6)(e), variance requests that do not result in any change in land use or density are categorically exempt from the environmental review process.
31. Chelan County Comprehensive Plan. The Comprehensive Plan has been reviewed; specifically, the goals and policies related to the Rural Waterfront (RW) for consistency with the proposed development which permits residential uses.
32. Chelan County Comprehensive Plan, Chapter 3 page 13, states the purpose of the Rural Waterfront (RW) designation is to “Provide the opportunity for the development, redevelopment and infill of existing intensely developed shoreline areas for residential, and water related/water dependent recreational and tourist development consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan. These areas provide a distinct water related lifestyle. Potential impacts to the surrounding area, critical areas, and water quality shall be addressed. These areas must be clearly identifiable as existing intensely developed rural shorelines; where a logical boundary can be delineated and set by the built environment. Such a boundary shall not permit or encourage a new pattern of sprawling low density or urban type development”. The Hearing Examiner finds that the project, as approved and conditioned, is consistent with the Comprehensive Plan.
33. Chelan County Code, Chapter 11.04 District Use Chart:
- 33.1 The proposed development is associated with the RW zoning district which allows residential and accessory structures as permitted uses.
 - 33.2 The proposed use is consistent with the CCC.
34. Chelan County Code, Section 11.16.020 Standards:
- 34.1 All development in this zone shall meet the applicable provisions of the CCC, including, but without limitation the following:
 - 34.1.1 (5)(A) Front yard: twenty-five ft. from the front property line or fifty-five ft. from the street centerline, whichever is greater.
 - 34.1.2 (5)(B) Rear yard: twenty ft. from the rear property line.
 - 34.1.3 (5)(C) Side Yard: five ft. from the rear property line.
 - 34.2 Hearing Examiner Finding: The requirement of 55 ft. from the street centerline is equal to 25 ft. from the front property line. Therefore, this provision code applies. The applicant is requesting to reduce the required front yard setback of 25 ft. from the front property line to 15 ft. from the front property line (or subsequently 55 ft. to 45 ft. from the street centerline). The applicant is also requesting a reduction of the rear yard setback from 20 ft. from the rear property line to 5 ft. The applicant seeks these reductions in order

increase the potential building envelope on the property that is smaller than nearby properties. The Applicant has not provided any proposed dimensions for the residence or garage.

- 34.3 Hearing Examiner Finding: Due to the small size of the lot reducing just the rear yard setback, the applicant will have enough room on the property to construct a residence and garage that are comparable to residential structures in the nearby vicinity.
35. Chelan County Code, Chapter 11.95 Variances - 11.95.030 Evaluation criteria:
- 35.1 (1) No variance shall be granted unless it can be shown that all of the following conditions existing:
- 35.1.1 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.
- 35.1.2 The applicant is requesting a variance to the 20 ft. rear yard setback so that the lot would have a 5 ft. building setback on the rear (easterly line) to accommodate a similar home fit for that neighborhood, and also a variance to the 25 ft. SR 150 setback to be a 15 ft. setback to accommodate a garage. The Applicant believes that the neighboring parcels within this short plat had houses built close to the rear lot lines and they would like to utilize that same right as the neighboring lots and would not be asking for a special privilege.
- 35.1.3 Hearing Examiner Finding: The applicant is requesting to reduce the front yard setback which abuts SR 150 as well as reducing the rear yard setback. The applicant is seeking the reduction in order to construct a residence and a garage. The applicant is proposing to place the garage within the agricultural setback associated with the property across SR 150. The rear-yard variance request would not constitute a special privilege since several adjacent properties were found to have structures located between 2 ft. and 10 ft. from the shared rear property line. The front-yard variance request would constitute a special privilege since no nearby properties along SR 150 were found to have structures closer than the required 25 ft. setback.
- 35.2 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.
- 35.2.1 After drafting in the setbacks and agricultural setback from the AC zoned parcel across the highway, the Applicant believes that they were not left enough room to develop the vacant lot. They were not able to obtain a waiver from the agricultural setback and needs to utilize as much of the remaining buildable area for a future home site.
- 35.2.2 Hearing Examiner Finding: Due to the required setbacks from the rear of the property, from SR 150, and also the agricultural setback (40 ft. from the front property line adjacent SR 150), the buildable area of the property is reduced. The existing agricultural setback limits the placement of the proposed house to the southwestern 45 ft. of the property. The plight of the applicant is in part due to the existing agricultural setback together with the lot being created prior to adoption of current zoning regulations. Construction of a structure closer to SR 150 will likely impede sight distance when exiting the private easement onto SR 150. Without the front yard setback reduction, the Hearing Examiner finds that

the lot size and regular shape would contain sufficient area to build the desired accessory structure. The Hearing Examiner would again note that the Applicant did not provide any dimensions for the proposed house or garage.

- 35.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
- 35.3.1 Hearing Examiner Finding: Lot sizes in the area are typically larger in size than the subject property. Due to the required agricultural setback, the buildable area of the property for the house is reduced, but the proposed garage could still be built to within 25 ft. of SR 150. The proposed reduced setbacks would not negatively affect the neighboring properties since several adjacent properties currently have structures with 2 ft. to 10 ft. of the shared rear property line. The hardship does not appear to be the result of the owner's actions. The plight of the applicant is in part due to the existing agricultural setback together with the lot being created prior to adoption of current zoning regulations.
- 35.4 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.
- 35.4.1 Hearing Examiner Finding: The authorization of the rear yard variance would not be materially detrimental to the purpose of Title 11 and this variance would promote the goals and objectives of Title 11 and the Comprehensive Plan. The proposed development for a single-family residence and accessory structure 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 and accessory structures within the RW zoning district. The authorization of the rear yard variance would promote the goals and objectives of Title 11 of the CCC as well as the Chelan County Comprehensive Plan by promoting the development of the property. Chelan County Code Chapter 11.04 District Use Chart permits agricultural structures within the RW zoning district. The issuance of the rear yard variance would not be injurious to properties in the same neighborhood since they all share a common rear property line and several properties already have structures placed with 2 ft. to 10 ft. of this property line. The issuance of the front yard variance would impede the sight distance of traffic when exiting onto SR 150 as a result from future construction of a garage and no nearby properties enjoy a reduced setback from SR 150.
- 35.5 The hardship asserted by the application results from the application of this title to the property.
- 35.5.1 Hearing Examiner Finding: As previously stated, the subject property was created prior to current code regulations for zoning. Per CCC Section 11.16.020, a front yard setback of 55 ft. from the street centerline and a rear yard setback of 20 ft. is required. 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 historically created parcels.

36. An open record public hearing was held via Zoom on August 4, 2021.

37. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
38. Neither the Applicant, nor the Applicant's agent, appeared at the hearing. Both the Applicant and the Applicant's agent were given written notice of the date, time, and manner of the hearing.
39. Testifying from the public were the following individuals:
 - 39.1 Carolyn Johnson. Ms. Johnson testified consistent with her written comments.
 - 39.2 Peter Storaasli. Mr. Storaasli testified consistent with his written comments, although his testimony did indicate that the front yard setback seems to be problematic.
 - 39.3 Chris Becker. Mr. Becker testified consistent with his written comments. He also testified that the lot has been used throughout the summer for storage of trailers and rental boats on the site. These trailers and boats have been blocking the driveway. He testified that the site has already been graded, assuming that the variances would be granted. He opposed both variance requests, stating that there is a small, one bedroom home on a similarly sized lot in the area. He repeated his concerns that renters on the property were blocking the access driveway.
40. The Hearing Examiner finds that because the Applicant has failed to provide any dimensions of the proposed residence and/or garage, the Hearing Examiner has difficulty determining whether or not the variances are necessary in order for the Applicant to use his property. By granting the rear-yard variance, the Hearing Examiner finds that a sufficient building envelope has been created for an accessory structure, a garage, if desired, as well to require all parking to occur on site.
41. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
42. 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 21-056, regarding the rear yard setback, is hereby **APPROVED**, subject to the conditions noted below. The request for setback variance from SR 150 from 55 feet from the centerline to 45 feet is hereby **DENIED**.

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 submitted on February 10, 2021 and the site plan of record date stamped July 28, 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 11.88.190, no construction activity shall be permitted within one thousand ft. 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, 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.
11. Pursuant to CCC 11.95.040, all parking of vehicles and trailers shall occur onsite, and sufficient area shall be provided onsite for the parking of all vehicles and trailers.

Dated this 5th day of August, 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.