

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

VAR 21-163
Boyd Family Cabin

RECEIVED
SEP 28 2021

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

CHELAN COUNTY
COMMUNITY DEVELOPMENT

THIS MATTER, having come on before the Chelan County Hearing Examiner on September 22, 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 front setback adjacent to Cedar Brae Road from 25 ft. to a) 2 ft. from the front property line to construct a garage; and b) 0 ft. from the front property line to construct retaining walls to support the associated driveway on the subject property. The retaining walls would be constructed partially in the right-of-way of Cedar Brae Road.
2. The owners/applicants are Boyd Family Cabin, LLC, PO Box 158, Leavenworth, WA 98826.
3. The project location is 15580 Cedar Brae Road, Lake Wenatchee, WA 98826.
4. The parcel number of the subject property is 27-17-29-510-210.
5. The legal description of the subject property is: Cedar Brae Lot 39 Inc. Shoreland; 0.80 acres.
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 subject property is currently developed with a single-family residence and an unpermitted funicular tram with an access platform.
9. The subject property is vegetated with mature trees and has a 40 percent downward slope towards Lake Wenatchee and is 0.80 acres.
10. The property to the north is Lake Wenatchee.
11. The property to the south is Cedar Brae Road, Residential; Rural Waterfront (RW).
12. The property to the east is Residential; Rural Waterfront (RW).

13. The property to the west is Residential; 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 within the jurisdiction of the Chelan County Shoreline Master Program (CCSMP). Therefore, the provisions of the CCSMP do apply. However, the proposed development is for a zoning variance that is not within shoreline jurisdiction.
17. Pursuant to the Federal Emergency Management Agency, FIRM Panel No. 5300150775B, the subject property is not within 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.
18. Pursuant to Chelan County Code Chapter 11.86, the subject property contains 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.
19. 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.
20. 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 an Inadvertent Discovery Plan.
21. Construction may commence once the variance is approved and building permits are issued.
22. The subject property would be accessed from Cedar Brae Road, which is a public road.
23. A water source was not identified in the application materials. The agent responded that this information was not relevant following County request.
24. Power is supplied by the Chelan County PUD.
25. A sanitation disposal was not identified in the application materials. The agent responded that this information was not relevant following County request.
26. The property is located within Fire District #9.

27. Noise from construction, typically associated with a residential construction. 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 ten pm to seven am.*
28. The proposed accessory structure would be of a similar size and design as the existing residential development in the vicinity
29. 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 May 18, 2021 with comments due June 1, 2021. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval. The following summarizes responding agencies:

Agencies Notified	Response Date	Nature of Comment
Chelan County Fire Marshal		No comment
Chelan County Public Works	June 3, 2021	Public Works will require a hold harmless agreement to be recorded with the County. Additionally, the proposed support walls must be approved by the County Engineer. If approved, the applicant must enter into a Right-of-Way use agreement prior to construction along with a Work in Right-of-Way permit.
Chelan County Building Official	May 20, 2021	The building code requires a 5 ft. setback from the property lines; however, fire separation distances (setbacks) are measured to the closest interior lot line. In this case, the reduced setback would be along the street frontage. Fire separation distances in this case would be measured to the street centerline, which would satisfy the 5 ft. setback requirement.
Fire District #1		No comment
WA State Dept. of Archaeology and Historic Preservation		No comment
Yakama Nation		No comment
Confederated Tribes of Colville	May 26, 2021	The subject property is not located within an area of high probability of archaeological resources given the slope of the hillside.
Chelan-Douglas Health District		No comment
Chelan County PUD		No comment
WA State Dept. of Ecology		No comment

- 30. No public comments were received.
- 31. Application and public hearing notice compliance:

Application Submitted:	April 16, 2021
Determination of Completeness issued:	April 30, 2021
Notice of Application:	May 18, 2021
Notice of Public Hearing:	September 10, 2021
Public Hearing:	September 22, 2021
Hearing Examiner Decision:	The Hearing Examiner will issue a decision within 10 working days from the close of the hearing. This decision has a 21 day appeal period.

- 32. 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.
- 33. 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 uses that are accessory to the primary residential structure. The Hearing Examiner finds that the development, as conditioned, is consistent with the Comprehensive Plan.
- 34. Chelan County Code, Chapter 11.04 District Use Chart:
 - 34.1 The proposed development is associated with the RW zoning district which permits accessory structures.
 - 34.2 The proposed use is consistent with the CCC.
- 35. Chelan County Code, Section 11.16.020 Standards:
 - 35.1 The applicant is requesting to vary the front yard setback from 25 ft. from the property line to 2 ft. from the property line to construct a garage structure and 0 ft. from the front property line to construct a driveway with retaining walls due to the existing 40 percent downward slope, limited alternative access points to the property, proximity to the location of the existing unpermitted funicular tram, and the application of Title 11 which was not in effect at the time the plat was created in 1928.
 - 35.2 Hearing Examiner Finding: Due to slope, access, existing structures, and the application of Title 11, the applicant is requesting a front yard setback of 2 ft. to construct a garage accessory to the existing single-family residence and 0 ft. to construct a driveway with retaining walls. The variance would allow the property owner to develop their property in a way that is consistent with Chelan County Code and the Comprehensive Plan
- 36. Chelan County Code, Section 11.88.140(2) Projections from buildings:
 - 36.1 Projections for foundation support, such as attached wing walls, landscape walls or similar structures, may project into the required yard setback, but shall not cross property lines. One of the proposed retaining walls to support the driveway cross the front property line and extend into the public right-of-way of Cedar Brae Road.
 - 36.2 Hearing Examiner Finding: One of the proposed retaining walls for the driveway and garage foundation support crosses the front property line and extends into the right-of-

way of Cedar Brae Road. Therefore, the retaining wall that crosses the property line would not be permitted unless the constructed in separate sections. Chelan County Public Works has agreed to the construction of retaining walls in the right-of-way upon issuance of applicable permits and agreements.

37. Chelan County Code, Chapter 11.95 Variances - 11.95.030 Evaluation criteria:

37.1 (1) No variance shall be granted unless it can be shown that all of the following conditions exist:

37.1.1. 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.

37.1.1.1 The applicant is requesting a zoning variance to construct a garage as an accessory structure to the existing single-family residence.

37.1.1.2 Hearing Examiner Finding: The surrounding properties are developed with single-family residences and their appurtenances. This variance would allow the applicant to enjoy the same developmental rights as the surrounding property owners. The proposed accessory structure would be of similar size and design as the surrounding residential developments. Therefore, this variance would not constitute a special privilege.

37.1.2 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.

37.1.2.1 Hearing Examiner Finding: The proposed garage location is the only feasible location on the subject property due to the steep slope. Alternative locations are too steep for construction or are not accessible by vehicle. The only access point on the subject property is located within the side yard setback and is used to provide Chelan County PUD access and maintenance to a pump station, power pole, and existing well. The applicant is proposing a new access point that would avoid conflict with the utility and maintenance easement and provide safer access to the proposed garage.

37.1.2.2 Hearing Examiner Finding: The plight of the applicant is due to the lot topography, which creates limited possible building sites for an accessory structure of which the applicant has no control.

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

37.1.3.1 The subject property was legally created via the Plat of Cedar Brae in 1928, before the adoption of setback requirements in Chelan County. Furthermore, the lot topography and limited access creates a lot that would make it difficult for the applicant to build an accessory structure in a reasonable location.

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

37.1.4. 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.

37.1.4.1 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 garage is similar to other uses and structures within the same zoning district and neighborhood. Chelan County Code Chapter 11.04 District Use Chart permits accessory structures within the Rural Waterfront (RW) zoning district. The issuance of this variance to allow for the construction of the proposed garage 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 accessory structures of similar size and design.

37.1.4.2 Hearing Examiner Finding: The authorization of this variance would promote the development of the subject property for a garage 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 for the construction of the proposed garage would promote the goals and objectives of Title 11 and the comprehensive plan.

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

37.1.5.1 The application of the 25 ft. front yard setback required by Title 11 results in the inability to construct an accessory structure on the subject property due to the 40 percent downward slope resulting in no feasible alternative building sites. Additionally, the Cedar Brae Plat was recorded in 1928, which predates the adoption and implementation of the zoning regulations per the current Chelan County Code.

37.1.5.2 Hearing Examiner Finding: The hardship is a result of the lot topography and the application of the Chelan County Code to the subject property based on property specific conditions.

37.2 The granting of a variance should not:

37.2.1 Be substantially based upon precedent established by illegal or nonconforming circumstances;

37.2.1.1 The hardship appears to be caused by site specific conditions such as topography and feasible access to the property. Based on the application materials, the applicant partially bases the need for the variance on the reasonable use of the existing tram. Without the variance, vehicles would be located in an uncovered area and goods and passengers would not be easily loaded onto the tram for transport down to the primary residence. However, the existing tram is an unpermitted structure that is located within the front yard setback.

- 37.2.1.2 Hearing Examiner Finding: While the hardship does not appear to be substantially based upon precedent established by illegal or nonconforming structures, the applicant's variance request is partially based on the use of the tram structure, which is unpermitted as it currently stands.
- 37.2.2 Be substantially based upon lack of reasonable economic return or a claim that the existing/proposed structure is too small;
 - 37.2.2.1 The residential accessory structure is located in the most feasible location on the subject property. The structure is proposed to be the minimum size reasonable for a single-family garage. Based on the application materials, the applicant has stated that the proposed development is not for the purpose of economic return.
 - 37.2.2.2 The hardship does not appear to be based on lack of reasonable economic return or a claim that the proposed garage structure is too small.
- 37.2.3 Be based on the fact that the condition for which the variance is requested, existed at the time the applicant acquired the property;
 - 37.2.3.1 The hardship created by the topography of the subject property existed at the time the property owners acquired the property; however, the 25 ft. front yard setback requirement did not exist at that time.
 - 37.2.3.2 Hearing Examiner Finding: The application of Title 11 precludes the property owner from constructing an accessory structure on the subject property, which did not exist at the time the applicant acquired the property.
- 37.2.4 Result in a de factor zone reclassification;
 - 37.2.4.1 The proposal would not result in any changes to the requirements of the Rural Waterfront (RW) zoning district.
 - 37.2.4.2 The proposal is consistent with this provision.
- 37.2.5 Be substantially for the purpose of circumventing density regulations.
 - 37.2.5.1 The proposal would not result in a change of density.
 - 37.2.5.2 Hearing Examiner Finding: The proposal is consistent with this provision.
- 38. An open record public hearing was held via Zoom on September 22, 2021.
- 39. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
- 40. Appearing at the hearing was Anne Hessburg on behalf of the Boyd Family Cabin, LLC. The applicant/owners were in agreement with all the proposed Conditions of Approval, with the exception of proposed Condition of Approval No. 7.1 and all references within the staff report stating that the "funicular/tram" is unpermitted. Ms. Hessburg argued that Administrative Determination 2015-085 is controlling because the tram was partially burned in 2015 and that AD 2015-085 (also referenced as AD 15-085), allows the full reconstruction of the tram without the need for any permit. Ms. Hessburg stated that the tram was built prior to 1994.

41. At the conclusion of the hearing, the Hearing Examiner received AD 15-085, as well as BP 150597. AD 15-085 does specifically reference the “funicular”. This administrative determination states that a steel cable on the funicular was partially burned near the residence. It also stated that the steel and concrete components of the funicular remain serviceable, but may need to be inspected and repaired. However, the wood components of the funicular were partially damaged by the fire and would be rebuilt in conjunction with the residence.
42. AD 15-085 determined that the work proposed by the Applicant in their April 6, 2015 technical memorandum constituted redevelopment pursuant to RCW 36.70A.480(3)(c)(i).
43. Importantly, AD 15-085 specifically determined that the administrative determination authorized the rebuilding of the single family residence in approximately the same location as outlined in the April 6, 2015 technical memorandum.
44. The Hearing Examiner also reviewed Building Permit 150597. This building permit specifically relates to the wood deck, but no portion of the funicular.
45. The Hearing Examiner finds that no additional building permit is currently required for the decking covered by BP 150597, but is required for the funicular/tram system, excluding all decks specifically permitted under BP 150597.
46. Lyman Boyd, member of Boyd Family Cabin, LLC, testified that the tram was constructed prior to 1994. He stated that he owned the property when the tram was built, likely between 1989 and 1992.
47. No member of the public testified.
48. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
49. 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 21-163 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 April 16, 2021.
4. 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.
5. 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.
6. 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.
7. Pursuant to Chelan County Code Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.
 - 7.1. An After-The-Fact building permit shall be required for the funicular tram and tram platform not specifically authorized by BP 15-0597, prior to the issuance of the building permit for the garage and associated structures.
8. Pursuant to Chelan County Code Section 11.88.140, the proposed retaining walls shall not cross property lines.
9. Pursuant to Chelan County Code Section 11.86.020, a geologic site assessment shall be required at the time of building permit application.

10. 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.
11. 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.
 - 11.1. An inadvertent discovery plan shall be submitted with the building permit application and kept onsite during all land disturbing activities.
12. The applicant shall conform to the comments and conditions of approval as found in the Chelan County Public Works Department agency comment response dated June 3, 2021:
 - 12.1. A Hold Harmless Agreement shall be required to be recorded with the County, alleviating the County of any fault if there is damage to the structure(s) due to County maintenance or work on the roadway/right-of-way.
 - 12.2. The retaining walls in the County right-of-way shall be approved by the County Engineer. If approved, the applicant shall enter into a Right-of-Way Use Agreement prior to any construction within the right-of-way or permits being issued for access. Additionally, a Work in Right-of-Way permit must be obtained from Public Works prior to work being done in the right-of-way.
13. 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.

Dated this 28 day of September, 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.