

CHELAN COUNTY

DEPARTMENT OF HEARING EXAMINER

316 WASHINGTON STREET, SUITE 301
WENATCHEE, WASHINGTON 98801

BEFORE THE CHELAN COUNTY HEARING EXAMINER

IN THE MATTER OF:)	FINDINGS OF FACT,
AA 2021-399)	CONCLUSIONS OF LAW AND
Brueske)	DECISION ON
)	ADMINISTRATIVE APPEAL

I. FINDINGS OF FACT

1. This is an Administrative Appeal submitted to appeal the Building Permit (BP) denial for the construction of what Appellant's characterize as a single-family residence addition, BP-210473. The appeal was submitted on the basis that the appellant believes that the proposed construction of additional bedrooms with ancillary spaces should be permitted as an addition to the existing single-family residence that was previously approved under BP-190282.
2. The Appellant/Owners are Scott and Cathleen Brueske, and their agents are Todd Smith and Chelsea Courtney, Syndicate Smith, and attorney Clay Gatens.
3. Property Characteristics and Description: The subject property is located at 1401 Nighthawk Ridge Lane, Leavenworth, WA 98826 and is legally described as: T 24N R 18EWM S 07 PT SW Parcel 7 Survey 18/4. Tax Parcel No.: 24-18-07-310-000. The property is zoned as RR20.
4. The applicant submitted a building permit for a 2,849-sf single-family residence (BP-190282) was issued on May 3, 2019 and a building permit for a 982-sf garage (BP-190283) was also issued on May 3, 2019. Construction of these structures is currently underway, but neither one has been finalized yet. BP-200242, which was for a proposed 2,643-sf addition to the residence, was submitted on April 29, 2020 and a letter of Building Permit Denial was issued on October 1, 2020. The building permit denial was appealed (AA 2020-007). The denial was affirmed by the Hearing Examiner on February 2, 2021. BP-210473, which is a modification of BP-200242, is an application for a proposed 2,579-sf addition to the residence and was submitted on June 1, 2021. A letter of Building Permit Denial was issued on August 19, 2021.
5. The land owner currently has two active building permits that were issued on May 3, 2019, one for construction of a single-family residence (SFR) and a second one for a garage/carport. On April 29, 2020, a subsequent building permit application (BP-200242) for construction labeled as an addition to the SFR was submitted to Community Development. Community Development staff determined that the permit application did not constitute an addition to an existing family structure, but instead was three (3) new, freestanding and independent

dwelling units, and BP-200242 was denied. This denial was upheld by the Hearing Examiner on February 2, 2021 (AA 2020-007).

6. On June 1, 2021, a new building permit application for construction labeled as an addition to the SFR was submitted to Community Development (BP-210473). Community Development staff determined that this permit application did not constitute an addition to the existing SFR, but instead is three (3) new independent dwelling units/sleeping units. Based on review of the application, the proposed is considered an R-1 Occupancy per the Washington State Building code and is not a permitted occupancy in the RR20 zoning district. Residential Group R-1 occupancies contain sleeping units where the occupants are primarily transient in nature and include boarding houses, congregate living facilities, hotels, and motels. The proposed clearly contains 3 separate sleeping units that are accessed from a common hallway. The "addition" is not considered part of the existing dwelling unit regardless of whether it is connected by an enclosed corridor. The Hearing Examiner previously determined that the proposed addition qualifies as an Accessory Dwelling Unit (ADU) and per Chelan County Code (CCC) Section 11.88.010(1), only one primary residential structure is allowed per lot and also only one accessory dwelling unit that is up to 1,200-sf in size is allowed per lot as defined in CCC Section 11.88.200.
7. Pursuant to CCC Section 3.04.030(1), the Chelan County Hearing Examiner is designated as the Chelan County building code board of appeals. Appeals shall comply with CCC Section 14.12.010 and review of the appeal application shall be in accordance with CCC Section 14.10.040. There shall be no administrative appeal of a decision of the board of appeals and such decision shall be final and conclusive unless appealed to the superior court in accordance with CCC Section 14.12.020.
8. On May 3, 2019, a building permit application (BP-190282) for an SFR was submitted.
 - 8.1 The application proposed a NEW 3 BDRM 3 BATH SFR TO INCLUDE: 2849 SQ FT MAIN FLOOR; 701 SQ FT 2ND FLOOR; 946 SQ FT COVERED PORCHES/DECKS & 500 GAL PROPANE TANK.
 - 8.2 The permit was issued on July 31, 2019 and construction is currently underway with several inspections still required before the certification of occupancy can be issued.
9. On April 29, 2020, a building permit application (BP-200242) for an addition to the SFR was submitted.
 - 9.1 The application proposed a 3 BDRM 3 BATH ADDITION TO EXISTING SFR TO INCLUDE: 2643 SQ FT MAIN FLOOR; 597 SQ FT 2ND FLOOR; 816 SQ FT COVERED PORCHES/DECKS.
 - 9.2 On October 1, 2020, a building permit denial was issued by the Chelan County Building Official.
 - 9.3 On October 12, 2020, an appeal of the building permit denial (AA 2020-007) was submitted by Syndicate Smith LLC, the agent acting on behalf of the applicant.
 - 9.4 On February 2, 2021, the Hearing Examiner affirmed the denial of BP-200242.
10. On June 1, 2021, a building permit application (BP-210473) for construction labeled as an addition to the SFR was submitted.

- 10.1 The application proposed a NEW 6 BEDROOM 3 BATH SFR ADDITION TO INCLUDE: 2,188 SQ FT MAIN FLOOR; 391 SQ FT SECOND FLOOR; AND 841 SQ FT COVERED PORCHES/DECKS.
 - 10.1.1 The proposed addition is attached to the easterly portion of the existing dwelling by a 40-foot enclosed corridor that connects to the ground floor with the continuance of a 65-foot corridor.
 - 10.1.2 There are three separate and independent doors that are accessed from this corridor that individually access the first-floor areas of the proposed "addition", which contains a full bathroom, laundry room with a water heater, a living room and a stairway to the second floor. The hallway is also accessed by a separate exterior door.
 - 10.1.3 The second-floor area is proposed for 2 bedrooms and a bunkroom, which is open to the living room below.
 - 10.1.4 The decks are partitioned off from each other clearly making the separate defined deck areas.
- 10.2 On August 19, 2021, a building permit denial was issued by the Chelan County Building Official.
 - 10.2.1 During review of the application, the Building Official determined that the proposed addition is considered an R-1 Occupancy per the Washington State Building Code.
 - 10.2.2 Residential Group R-1 occupancies contain sleeping units where the occupants are primarily transient in nature.
 - 10.2.3 Sleeping Units are a single unit that provides rooms or spaces for one or more persons, includes permanent provisions for sleeping and can include provisions for living, eating and either sanitation or kitchen facilities but not both.
 - 10.2.4 The proposed addition clearly contains 3 separate sleeping units that are accessed from a common corridor, which is indicative of a hotel/motel. The addition is not considered part of the dwelling unit regardless of whether it is connected by an enclosed corridor.
 - 10.2.5 The proposed addition qualifies as an ADU. However, it exceeds the maximum allowable 1,200-sf requirement of Chelan County Code Section 11.88.200. The definitions are contained in Chelan County Code Sections 14.98.050 (Accessory Dwelling Unit) and 14.98.625 (Dwelling Unit).
 - 10.2.6 Regardless of whether sleeping units or dwelling units are attached to structures by breezeways, footings, enclosures, corridors, etc. does not change the classification of what is being proposed. Due to the design including full living facilities in each unit, the proposal is for transient housing, which is another requirement to meet the definition of R-1 occupancy. An R-1 Occupancy applies if sleeping units are proposed, which includes both Hotels and Motels and a dwelling unit is a dwelling unit when the proposal meets the definition of the code.
 - 10.2.7 While the Appellant denies the sleeping units will be used as transient rentals, the design of the sleeping units with separate exterior access, entirely

separate units, separate decks clearly indicated that transient rental is one purpose of these sleeping units.

- 10.2.8 R-1 occupancy is not an allowed use in the RR20 zoning whether or not the units have kitchens. If the units have kitchens, they qualify as an ADU and only one ADU is allowed per property. There are 3 ADUs in this proposal.
- 10.2.9 Due to the fact that each unit has bathrooms, living areas, and sleeping areas, it appears that each unit is meant to be a distinct unit, not an “addition” to the primary residence.
11. On August 27, 2021, the Administrative Appeal was filed with Chelan County Community Development with the associated application fees.
12. On September 29, 2021, a hearing date of December 1, 2021 was scheduled.
13. Notice of the public hearing was issued on November 19, 2021.
14. After due legal notice, an open record public hearing was held via Zoom video conference on December 1, 2021.
15. Admitted into the record were the entire Planning staff files for AA 2021-399, including application materials, Letter of Denial of BP-210473, BP-210473 application and site plan, BP-210473 plan sets, AA 2020-007 affirmed decision, Letter of Denial of BP-200242 and BP-190282 application and site plan and field packet.
16. Appearing and speaking on behalf of the Appellant was Clay Gatens. Mr. Gatens argued consistent with the materials submitted by the Appellant prior to the hearing, including Mr. Gatens’ November 29, 2021 email to the Hearing Examiner, the Declaration of Cathleen Brueske and Declaration of Todd Smith. Mr. Gatens originally argued that the three new units only had access through the main residence, but later conceded that a separate, exterior access to the hallway serving the three separate units was part of the plan. Mr. Gatens argued that if commercial use is later undertaken, that the County’s sole remedy would be begin enforcement proceedings in violation of the County code. Mr. Gatens argued that the sleeping units were attached to the main dwelling unit and therefore, are a proper addition.
17. Mr. Gatens correctly argued that there are no kitchen facilities noted on the plans for these new, separate, units.
18. The Hearing Examiner finds that the proposal set forth in the building permit that was denied, clearly creates three separate, defined sleeping units that are not a part of the primary residence. The Appellant has gone to great lengths to create these three distinguishable units, separate from the residence. Their first attempt, creating accessory dwelling units, the building permit of which was denied by Chelan County and affirmed by the Hearing Examiner, has now morphed into creating sleeping units. The clear intent of the Appellants is the building of sleeping units that are separate from the primary dwelling unit.
17. No member of the public testified at the hearing.
18. 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 no authority to grant relief in equity, such as in waiver and estoppel.
2. The Hearing Examiner has been granted authority to render this Decision.
3. The proposed addition qualifies as an ADU. However, it exceeds the maximum allowable 1,200-sf requirement of Chelan County Code Section 11.88.200. The definitions are contained in Chelan County Code Sections 14.98.050 (Accessory Dwelling Unit) and 14.98.625 (Dwelling Unit).
4. R-1 occupancy is not an allowed use in the RR20 zoning whether or not the units have kitchens. If the units have kitchens, they qualify as an ADU and only one ADU is allowed per property. There are 3 ADUs in this proposal.
5. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

III. DECISION

WHEREFORE, based upon the above Findings of Fact and Conclusions of Law, the building permit denial of BP-210473 issued August 19, 2021, **IS HEREBY AFFIRMED** in all respects.

Dated this 14th day of December, 2021.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

This decision is subject to appeal pursuant to the Chelan County Code. Appeals must be timely filed. Anyone considering an appeal of this decision should seek immediate legal advice.

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