

FEB 17 2022

CHELAN COUNTY
COMMUNITY DEVELOPMENT

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
CUP 20-014)	DECISION AND CONDITIONS
Johnson)	OF APPROVAL
)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on February 16, 2022, 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. An application for a Conditional Use Permit has been requested by property owners Brent and Allison Johnson to use an existing accessory dwelling unit (ADU) as a two-bedroom Bed and Breakfast. The existing layout of the building is to be used for accommodations with a management plan for guests to abide by. New signage is proposed adjacent to the front door of the ADU displaying occupancy guidelines and contact information of management.
2. The applicant/owners are Brent and Allison Johnson, 10212 Titus Road, Leavenworth, WA 98826.
3. The subject property is located at 10212 Titus Road, Leavenworth, WA 98826.
4. The parcel number for the subject property is 24-17-01-550-195.
5. The subject property is located within the Leavenworth Urban Growth Area (UGA).
6. The abbreviated legal description of the subject property is EMIG PARK LOT 32 LOT A BLA 2017-001 LOT A BLA 2016-321 LOT 1A SP 3567 and the lot size is 3.5 acres.
7. The Comprehensive Plan designation and zoning designation for the subject site is Residential Low Density 10,000 (RL-10) within the Leavenworth UGA.
8. The subject property is currently used as a primary residence with one single-story home with detached garage and one ADU. The main residence and garage were built in 1972 and the ADU was constructed in 1983. The parcel has been part of two separate boundary line adjustments (BLA's), which have established the current parcel as it is today.
9. The subject property has moderate tree cover with ornamental landscaping.
10. Property to the north, south and east are existing residences and zoned RL-10 within the Leavenworth UGA.
11. There are two separate lots that lie to the west of the subject property. Both lots contain existing residences and are zoned RL-10 within the Leavenworth UGA.
12. The applicant submitted an Aquifer Recharge Disclosure Form with application, dated August 28, 2020. The proposed project does not meet any evaluation criteria, exempting requirement of a vulnerability report.

13. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does not contain identified habitat; therefore, the provisions of CCC Chapter 11.78, would not apply.
14. According to the Natural Resources Stream Typing Maps, no streams are indicated on or adjacent to the subject property. Therefore, the provisions of CCC Chapter 11.78, would not apply.
15. Chelan County Code GIS mapping shows that the site contains erosive soils. Therefore, the provisions of Chelan County Code Chapter 11.86 would apply to any future development of the subject property.
16. Pursuant to the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, a freshwater emergent wetland is located adjacent to the subject property. Any future development would require compliance with the provisions of CCC Chapter 11.80 Wetland Areas Overlay District.
17. No ground-breaking activities are expected to occur as a result of the future operation of the Bed and Breakfast. Pursuant to RCW 27.53.020, if cultural resources are found, the applicant will be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes, and Chelan County Community Development.
18. The existing ADU would be used for the proposed Bed and Breakfast after the required fire inspection.
19. Hilltop Drive is a private access easement off of Titus Road.
20. At the time of application, the property had a shared private well. The Chelan-Douglas Health District (CDHD) is requiring that the shared well be upgraded to a Group B public water system, which has already been approved.
21. Power is supplied by Chelan County PUD.
22. Sanitation is provided by an existing septic system.
23. The applicant must comply with CCC Chapter 7.35 Noise.
24. No new structures are proposed that could affect viewsheds of surrounding properties.
25. The proposed Bed and Breakfast within an existing residential structure is SEPA exempt pursuant to WAC 197-11- 800(6) and Chelan County Code Section 13.04.080.
26. The Notice of Application was referred to surrounding property owners within 300 ft. (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on September 24, 2020, with comments due October 8, 2020. Agency comments are considered and, when appropriate, associated Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received:

Agencies Notified	Response Date	Nature of Comment
Chelan County Fire Marshal	September 24, 2020	Requires a fire inspection prior to opening.
Chelan County Building Official	No Comment Submitted	
Chelan-Douglas Health District (CDHD)	October 15, 2020	New public supply for domestic water service (Group B approved). Will need a food service permit

Agencies Notified	Response Date	Nature of Comment
		from CDHD as well.
Chelan County Public Works	No Comment Submitted	
Chelan County PUD	No Comment Submitted	
Chelan County Fire District No.3	No Comment Submitted	
Cascade School District	No Comment Submitted	
WA Dept. of Archaeology and Historic Preservation	No Comment Submitted	
Yakama Nation	No Comment Submitted	
Confederated Tribes of Colville	No Comment Submitted	
City of Leavenworth	October 7, 2020	Recommends compliance with current Leavenworth Municipal Code section 18.52.060.

27. No public comments were received.
28. The application materials were submitted on August 28, 2020.
29. A Determination of Completeness was issued on September 21, 2020.
30. The Notice of Application was provided on September 24, 2020.
31. The Notice of Public Hearing was provided on February 4, 2022.
32. Leavenworth Comprehensive Plan - The Comprehensive Plan outlines the purpose and intended uses for Residential Low 10 land use designation. The proposed Bed and Breakfast use within an existing residence is consistent with the RL 10 designation
33. Adopted Leavenworth Municipal Code, Chapter 18.23: Residential Low Density 10,000 (RL10). The proposed development is located in the RL10 zoning district of the Leavenworth UGA. According to LMC Section 18.23.030(S), Bed and breakfast facilities are permitted as a Conditional Use.
 - 33.1 “Bed and breakfast facilities, meaning a single-family residential unit which provides transient lodging, and may include breakfast for guests only, for compensation, by renting up to three rooms within the primary residence, provided the minimum conditions found in LMC 18.52.120(A) through (G) shall be complied with.”.
34. Adopted Leavenworth Municipal Code, Chapter 18.52.120: Conditional Use Permit – Bed and breakfast. In granting a conditional use permit for a bed and breakfast, the hearing examiner shall impose the following minimum conditions:
 - 34.1 The bed and breakfast facility shall be the principal residence of the owner. Detached units/rooms are allowed.
 - 34.1.1 Finding of Fact: According to the Assessor’s database, property taxes are sent to the address of the subject property, so this is considered the principle residence of the owner. The two bedrooms being rented out are in an existing accessory

dwelling unit that is detached from the main residence, as allowed in this section of the Leavenworth Municipal Code.

34.1.2 Conclusion: This is the principal residence of the owner and the bed and breakfast facility will operate in the detached dwelling unit.

34.2 Bed and breakfast facilities shall meet all applicable health, fire safety, and building codes and shall be operated so as to not give the appearance of being a business, and those facilities in or adjacent to residential districts shall not infringe upon the right of neighboring residents to peaceful occupancy of their homes.

34.2.1 Finding of Fact: The Fire Marshal is requiring a fire inspection of the Bed and Breakfast prior to opening. The applicant will need to fill out the Annual Fire and Life Safety Certificate of Self Inspection Application and return in to the Fire Marshal prior to scheduling an inspection. The CDHD is requiring that the shared well be upgraded to a Group B system, which has already been approved. In addition, the CDHD is requiring the applicant to obtain a food service permit.

34.2.2 Conclusion: As conditioned, the proposal meets all applicable health, fire safety, and building codes through a fire inspection and applicable health permits.

34.3 One nonilluminated sign, not to exceed four square feet, shall be permitted subject to the review process appropriate to the zoning district.

34.3.1 Finding of Fact: The current sign is nonilluminated and doesn't exceed four square feet.

34.3.2 Conclusion: The existing sign conforms to code.

34.4 Driveways accessing a bed and breakfast which are more than 100 feet in length shall have an improved width of at least 12 feet with appropriately spaced cutouts to facilitate the passage of two vehicles traveling in opposite directions;

34.4.1 Finding of Fact: The existing driveway is paved and is approximately 60' long by 30' wide with a parking area large enough for two vehicles adjacent to the existing ADU that will be used by guests. Chelan County Public Works did not comment on this proposal.

34.4.2 Conclusion: The existing driveway conforms to code.

34.5 One off-street patron parking space, not located within a required yard area, shall be provided for each room rented. All parking must be accommodated on-site; and

34.5.1 Finding of Fact: The existing driveway is paved and is approximately 60' long by 30' wide with a parking area large enough for two vehicles adjacent to the existing ADU that will be used by guests. Chelan County Public Works did not comment on this proposal.

34.5.2 Conclusion: Pursuant to Leavenworth Code Section 18.52.120(E), the applicant shall maintain two parking spaces consistent with code throughout the life of the project.

34.6 The examiner may impose other conditions, such as additional parking, improved access, landscaping, or screening, if found necessary to protect the best interests of the surrounding properties of the neighborhood due to the nature of the site or the facility.

34.6.1 Finding of Fact: The ADU is not visible from adjacent properties due to the screening provided by the existing landscaping.

34.6.2 Conclusion: No additional conditions of approval are recommended.

35. A Bed and Breakfast may be permitted as a conditional use permit, pursuant to adopted Leavenworth Code Sections 18.23.030 and 18.52.120. The Hearing Examiner finds that the existing ADU conforms to all applicable code requirements to be used for a 2-bedroom Bed and Breakfast.
36. An open record public hearing after due legal notice was held using Zoom video conferencing on February 16, 2022.
37. Appearing and testifying were Brent and Allison Johnson. Brent and Allison Johnson are the owners of the property and the Applicants. Mr. and Mrs. Johnson indicated that they agreed with all representations in the staff report and that all of the proposed Conditions of Approval were acceptable.
38. No member of the public testified at the hearing.
39. The Hearing Examiner has reviewed the applications and submitted materials. Based on the information contained in the applications and compliance with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code, the Hearing Examiner provides the attached conditions of approval.
40. 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 authority to render this Decision.
2. Based on review of the application materials submitted, the proposed uses are consistent with the goals and policies of the Leavenworth Comprehensive Plan.
3. As conditioned the project is consistent with the Adopted Leavenworth Municipal Code, Chapter 18.52.120: Conditional Use Permit – Bed and breakfast.
4. A Bed and Breakfast may be permitted as a conditional use permit, pursuant to adopted Leavenworth Code Sections 18.23.030 and 18.52.120.
5. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

III. DECISION

Based upon the above noted Findings and Fact and Conclusions, CUP 20-014 is hereby **APPROVED**, subject to the following Conditions of Approval.

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. Pursuant to adopted Leavenworth Code Section 18.52.090 Any approval of any application for a conditional use shall:
 - 1.1 Automatically be for a period of one year from the date of approval;
 - 1.2 At the expiration of its first year of approval, and after review by the community development director and assurance by the director that all conditions of approval have been or are being met, any such approved conditional use may be continued. At any time, the city may at its discretion require that the conditional use permit be reviewed by the

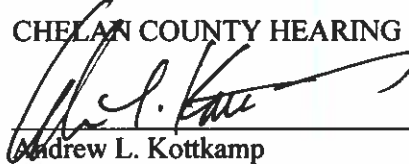
if need for mitigation is determined. All conditions of the permit shall continue to apply throughout the life of the use.

2. Pursuant to adopted Leavenworth Code Section 18.52.120, the hearing examiner shall impose the following minimum conditions:
 - 2.1. The bed and breakfast facility shall be the principal residence of the owner. Detached units/rooms are allowed;
 - 2.2. Bed and breakfast facilities shall meet all applicable health, fire safety, and building codes and shall be operated so as to not give the appearance of being a business, and those facilities in or adjacent to residential districts shall not infringe upon the right of neighboring residents to peaceful occupancy of their homes;
 - 2.3. One nonilluminated sign, not to exceed four square feet, shall be permitted subject to the review process appropriate to the zoning district;
 - 2.4. Driveways accessing a bed and breakfast which are more than 100 feet in length shall have an improved width of at least 12 feet with appropriately spaced cutouts to facilitate the passage of two vehicles traveling in opposite directions;
 - 2.5. One off-street patron parking space, not located within a required yard area, shall be provided for each room rented. All parking must be accommodated on-site.
3. Pursuant to adopted Leavenworth Code Section 18.52.120(B), the applicant shall provide an approved Class B Water Systems permit.
4. Pursuant to adopted Leavenworth Code Section 18.52.120(B), the applicant shall obtain a food permit from the Chelan Douglas Health District prior to finalization of a building conversion permit.
5. Pursuant to adopted Leavenworth Code Section 18.52.120(B), the applicant shall fill out the Annual Fire and Life Safety Certificate of Self Inspection Application and return in to the Fire Marshal prior to scheduling an inspection.
6. Pursuant to adopted Leavenworth Code Section 18.52.120(E), the applicant shall maintain two parking spaces consistent with code throughout the life of the project.
7. Pursuant to comment letter received from the City of Leavenworth on October 7, 2020, the applicant shall meet the recommended conditions of the current Leavenworth Municipal code found in section 18.52.060, including:
 - 7.1 A written management plan shall be submitted to the Administrator for review and approval. It shall include, at minimum, the proposed management structure, providing guests with information related to emergency exit routes, 24 hours a day seven days a week contact information, required guest rules and regulations, including for litter control, quiet hours, parking and proposed methods to enforce occupancy limitations and other requirements.
 - 7.2 Contact information shall be provided to the adjacent properties, District 3 Fire Chief, and Chelan County Sheriff.
 - 7.3 A legible sign shall be placed adjacent to the front door (outside), clearly visible to the general public listing the maximum number of occupants permitted to stay overnight, the maximum number of vehicles allowed to be parked on site, and the name and contact information of the contact person.
 - 7.4 Quiet hours shall, at a minimum, be from 10:00 to 7:00 am, or as otherwise provided by county, city or state regulations, whichever is more stringent.

- 7.4 Quiet hours shall, at a minimum, be from 10:00 to 7:00 am, or as otherwise provided by county, city or state regulations, whichever is more stringent.
- 7.5 Prior to operation of the B&B, the property owner shall submit a notarized affidavit, certifying that he/she will comply with all of the provisions of the bed and breakfast regulations, conditional use permit, business license conditions for operating a bed and breakfast, and all relevant laws.
- 7.6 All proposed lighting shall comply with LMC 14.28, Lighting Standards.

Dated this 17th day of February, 2022.

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.