

FEB 17 2022

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

CHELAN COUNTY
COMMUNITY DEVELOPMENT

IN THE MATTER OF

VAR 21-431

Reilly

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

THIS MATTER, having come on before 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. This is an application for a variance submitted to reduce the required front yard setbacks of the subject property for the future construction of a detached garage. The variance request is to reduce the required 25 ft. building setback from the front line of the property to 1 ft. The subject property is located within the within the Rural Residential/Resource 2.5 (RR 2.5) zoning district.
2. The owner is Vincent Reilly, 2304 SE 40th Ct., Sammamish, WA 98075. The agent is Ben Taylor, BT Buildingworks LLC, 403 N. Franklin Ave., Wenatchee, WA 98801.
3. The project location is 18741 River Road, Plain, WA 98826.
4. The parcel number of the subject property is 26-17-12-725-035.
5. The legal description of the subject property is: Parcel C as described in and delineation on Charles Rezba Short Plat No. 188, recorded July 14, 1976 under Chelan County Auditor's File No. 762437, being a portion of Lot 17, Plat No. 3 of Wenatchee Park, according to the plat thereof recorded in Volume 3 of Plats, page 8.
6. The subject property is located outside of an Urban Growth Area.
7. The Comprehensive Plan designation is Rural Residential/Resource 2.5 (RR 2.5).
8. The zoning designation is Rural Residential/Resource 2.5 (RR 2.5).
9. The property is currently used for residential purposes and has an existing residence that was built in 1979.
10. Site Physical Characteristics: From River Road, which abuts the western property line, the subject property steeply slopes up towards the east to overlook the Wenatchee River. Mature trees populate the majority of the property.
11. The parcel site size is 0.64 acres (27,879 sq. ft.).

12. The property to the north is in residential and agriculture use and is zoned Rural Recreation/Residential (RRR).
13. The property to the north and south is zoned Rural Residential/Resource 2.5 (RR 2.5).
14. The property to the east is the Wenatchee River.
15. The property to the west is River Road and is zoned Rural Residential/Resource 5 (RR 5).
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 contains riparian habitats. Therefore, the provisions of Chelan County Code Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do apply.
18. 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.
19. Pursuant to the Federal Emergency Management Agency, FIRM Panel No. 5300150450B, the subject property is outside of an 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. The subject property is within the rural jurisdiction of the CCSMP. Therefore, the provisions of the CCSMP do apply.
21. Pursuant to the Federal Emergency Management Agency, FIRM Panel No. 5300150775B, 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.
22. Pursuant to CCC Chapter 11.86, the subject site contains erosive soils. Therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District do apply.
23. Although 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 requires notification to the Department of Archaeology and Historic Preservation if any artifacts are uncovered or discovered during the development of the proposed variance.
24. Construction shall commence once the variance is approved and building permits are issued.
25. The subject property is accessed directly from River Road.
26. Domestic water is provided by an existing shared private well.

27. Power: Chelan County PUD.
28. Sanitation is provided by an existing septic system.
29. Fire protection: The property is located within Chelan County Fire District #9.
30. Noise: Similar to other residential uses along River road. The development must comply with CCC, Chapter 7.35 Noise and RCW 70.107.
31. Visual impacts: Similar to other residential uses. The proposed garage shall be placed on the property similar to other residential structures in the area.
32. 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 October 20, 2021 with comments due November 3, 2021. Agency comments are considered and, when appropriate, associated recommended Conditions of Approval. The following summarizes responding agencies:
33. The following are agencies that were notified:

Agencies Notified	Response Date	Nature of Comment
Chelan County Building Official	10/22/2021	No ADU will be permitted above the garage.
Chelan County Fire Marshal		No comment received.
Chelan County Public Works	10/22/2021	Public Works has no issue with allowing the variance due to topography of the site. The applicant shall record a "Hold Harmless" agreement with the County.
Fire District #9		No comment received.
WA State Dept. of Archaeology and Historic Preservation		No comment received.
Yakama Nation		No comment received.
Confederated Tribes of Colville	11/10/2021	No archaeological sites have been recorded to date. The typical conditions should be applied, discovery clause, human remains clause, and changes in the area of effect.
Chelan-Douglas Health District		No comment received
Chelan County PUD		No comment received.

34. No public comments were received.
35. 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.

36. The application materials were submitted on September 27, 2021.
37. A Determination of Completeness was issued on October 18, 2021.
38. The Notice of Application was provided on October 20, 2021.
39. The Notice of Public Hearing was provided on February 5, 2022.
40. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Rural Residential/Resource 2.5 (RR 2.5) designation for consistency with the proposed development which permits residential uses. Chelan County Comprehensive Plan, Chapter 3 page 9, states the purpose of the Rural Residential/Resource 2.5 (RR 2.5) designation is to "To maintain the range of rural development opportunities consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan. These areas can provide buffering or transitions between existing rural developments and areas of higher or lower densities. This designation should not function as an urban reserve area, although these areas may someday be incorporated into an urban growth area." The Hearing Examiner finds that the development, as conditioned, is consistent with the Comprehensive Plan.
41. Chelan County Code, Chapter 11.04 District Use Chart:
 - 41.1 The proposed development is associated with the RR 2.5 zoning district, which allows residential and accessory structures as permitted uses.
 - 41.2 The proposed use is consistent with Chelan County Code.
42. Chelan County Code, Section 11.18.020 Standards. All development in this zone shall meet the applicable provisions of the CCC, including, but without limitation the following:
 - 42.1 (5)(A) Front yard: twenty-five ft. from the front property line or fifty-five ft. from the street centerline, whichever is greater.
 - 42.2 (5)(B) Rear yard: twenty ft. from the rear property line.
 - 42.3 (5)(C) Side Yard: five ft. from the rear property line.
 - 42.4 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 applies. The applicant is requesting to reduce the required front yard setback of 25 ft. from the front property line to 1 ft. from the front property line (or subsequently 55 ft. to 31 ft. from the street centerline). The applicant seeks this reduction in order to construct a garage. The proposed garage would be accessed via the existing access easement and not River Road.
 - 42.5 Conclusion: By reducing the front yard setback, the applicant will have enough room on the property to construct a detached garage that is comparable to residential structures on adjacent properties.
43. Chelan County Code, Chapter 11.95 Variances - 11.95.030 Evaluation criteria:
 - 43.1 No variance shall be granted unless it can be shown that all of the following conditions exist:
 - 43.1.1 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.

- 43.1.1.1 Applicant's Response: The parcel currently contains an existing residence with no garage and we've determined the only feasible location for an accessible garage would be on the upper portion of the lot and would necessitate the requested setback. All three of the other parcels in this short plat have detached or attached garages that can be easily accessed with a vehicle, including the parcel to the north (#261712725036), which has a detached garage with a reduced front setback, in a similar size and location as the applicant's proposed garage.
- 43.1.1.2 Hearing Examiner Finding: The applicant is requesting to reduce the front yard setback from River Road. The applicant is seeking the reduction in order to construct a detached garage. The detached garage would be accessed via the existing access easement and not from River Road.
- 43.1.1.3 The front yard variance request would not constitute a special privilege since a neighboring property has a detached garage with a similar reduced front yard setback.
- 43.1.2 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.
 - 43.1.2.1 Applicant's Response: Steep topography, utility and access easements, and the fixed location of the septic drainfields have eliminated any other possible placement of the garage on the property.
 - 43.1.2.2 Hearing Examiner Finding: Due to existing easements and the location of septic drainfields, the topography of the property, and the location of the property adjacent to the Wenatchee River, the buildable area of the property is reduced more than neighboring properties
 - 43.1.2.3 Conclusion: The plight of the applicant is due to circumstances beyond their control. Without the front yard setback reduction, staff is of the opinion that the subject property would not contain sufficient area to build the desired accessory structure.
- 43.1.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
 - 43.1.3.1 Steep topography, utility and access easements, and the fixed location of the septic drainfields have eliminated any other possible placement of the garage on the property.
 - 43.1.3.2 Hearing Examiner Finding: Lot sizes in the area are typically larger in size than the subject property. The proposed reduced setbacks would not negatively affect the neighboring properties since some adjacent properties currently have structures within the front yard setback.

43.1.3.3 Conclusion: 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 easements and site topography..

43.1.4 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.

43.1.4.1 All three of the other parcels in this short plat have detached or attached garages that can be easily accessed with a vehicle, including the parcel to the north (#261712725036), which has a detached garage with a reduced front setback, in a similar size and location as the applicant's proposed garage. We've already been in contact with Andrew Brunner at Public Works, and based on the site plan and information given, he has stated "PW will not object to the variance request. As stated below, a Hold Harmless Agreement will need to be recorded with the County."

42.1.4.2 Hearing Examiner Finding: The authorization of this variance would not be materially detrimental to the purpose of Title 11; this variance would be consistent with goals and objectives of Title 11 and the Comprehensive Plan. The proposed development for an 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 accessory structures within the RR 2.5 zoning district. The proposed detached garage would be accessed safely via the existing access easement off of River Road.

43.1.4.3 Conclusion: The issuance of the front yard variance would not be injurious to properties in the general vicinity.

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

43.1.5.1 Hearing Examiner Finding: As previously stated, the subject property was created prior to current code regulations for zoning. Per CCC Section 11.14.020, a front yard setback of 25 ft. from the front property line (or subsequently 55 ft. from the street centerline) is required.

43.1.5.2 The hardship is a result of the application of the CCC to the subject property based on property topographic constraints and specific conditions, which does not factor in historically created parcels.

44. An open record public hearing was held via Zoom on February 16, 2022.

45. The staff report, application materials, agency comments and the entire file of record were admitted into the record.

46. Appearing and testifying for the Applicant was Ben Taylor. Mr. Taylor 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. Taylor testified he agreed with all representations in the staff report and had no objection to any of the proposed Conditions of Approval.
47. No member of the public testified at this hearing.
49. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
50. 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 21-431 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 submitted on September 27, 2021, and site plan of record date stamped September 27, 2021.
3. Access to the detached garage will only be from the existing access easement and not directly from River Road
4. Pursuant to comments received from Chelan County Public Works on October 22, 2021, the applicant shall record a "Hold Harmless" agreement with the County that waives any rights to recovery of damage to the building or property by County road service/maintenance operations (including snow plowing).
5. Pursuant to comments received from the Chelan County Building Official on October 22, 2021, the proposed garage cannot be utilized as Accessory Dwelling Unit (ADU).
6. 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.
7. 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.
8. 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.
9. Pursuant to CCC Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.
10. 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.
11. Pursuant to RCW 27.53.060, if any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.
12. An inadvertent discovery plan shall be submitted with the building permit application and kept onsite during all land disturbing activities. A sample of this plan is attached as Exhibit B.
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 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.