

FEB 17 2022

CHELAN COUNTY  
COMMUNITY DEVELOPMENT

## BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF	)	
	)	
VAR 21-536	)	FINDINGS OF FACT,
Rancho Ramirez, LLC	)	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 agricultural setback from the northern property line of the subject property for the future construction of a residence. The variance request is to reduce the required 100 ft. agricultural setback down to the required zoning side yard setback of 10 ft. The subject property is located within the within the Commercial Agricultural Lands (AC) zoning district.
2. The owner is Humberto Ramirez, 257 Substation Road, Chelan, WA 98816. The Applicant is Rancho Ramirez LLC, 257 Substation Road, Chelan, WA 98816.
3. The project location is NNA, Apple Acres Road, Chelan, WA.
4. The parcel number of the subject property is 28-23-33-410-340.
5. The legal description of the subject property is: T 28N R 23EWM S 33 Lot 1 SS#1998-77; 1.00 acres.
6. The subject property is located outside of an Urban Growth Area.
7. The Comprehensive Plan designation is Commercial Agricultural Lands (AC).
8. The zoning designation is Commercial Agricultural Lands (AC).
9. The property is currently vacant.
10. Site Physical Characteristics: The project site was recently an orchard, but the Applicant is planning on removing existing trees and building a single-family residence.
11. The parcel site size is 1.00 acre. The property is approximately 130 feet wide.
12. The property to the north and south are in residential use and are zoned Commercial Agriculture (AC).
13. The property to the east is in agricultural use and is zoned Commercial Agriculture (AC).

14. The property to the west is Apple Acres Road and in agricultural use and is zoned Commercial Agricultural (AC).
15. The Aquifer Recharge is exempt pursuant to Chelan County Code Section 11.82.060(2)(A).
16. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species Maps, the subject property does not contain identified habitats. Therefore, the provisions of Chelan County Code Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.
17. Pursuant to the Department of Natural Resource stream typing map, no streams are present on the subject site; therefore, the provision of Chelan County Code Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.
18. The subject property is not within the jurisdiction of the Chelan County Shoreline Master Program (CCSMP). Therefore, the provisions of the CCSMP do not apply.
19. Pursuant to the Federal Emergency Management Agency, panel # 5300150800A of the FIRM maps, there is no floodplain on the subject property. 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. This property is not located within a wellhead protection area.
21. Pursuant to Chelan County Code Chapter 11.86, the subject site does not contain geological hazards for erosion hazards. Therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District do not apply.
22. Pursuant to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, there are no wetlands associated with this property; therefore, the provisions of Chelan County Code Chapter 11.80 Wetland Areas Overlay District do not apply.
23. Pursuant to comment letter from the Washington Department of Archaeology and Historic Preservation (DAHP), date stamped December 30, 2021, the statewide predictive model indicates that there is a high probability of encountering cultural resources within the project area; however, due to the small footprint of the project, DAHP is not requesting a cultural resources survey at this time. An Inadvertent Discovery Plan (IDP) is required and the Applicant must also prepare construction crews for the possibility of encountering archaeological material during ground disturbing activities.
24. Construction will begin upon receipt of building permit.
25. The subject property is accessed from Apple Acres Road.
26. Domestic water will be provided by a single private well proposed with the construction of the residence.
27. Power: Chelan County PUD.

29. Fire protection: The property is located within Chelan County Fire District #3.
30. Noise: Similar to other residential and agricultural uses in the area.
31. Visual impacts: A single-family residence will not be out of character for the surrounding area.
32. The Notice of Application was referred to surrounding property owners within 1000 feet (excluding 60 feet of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on December 18, 2021 with comments due January 1, 2022. 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:

<b>Agencies Notified</b>	<b>Response Rec'd Date</b>	<b>Agencies Notified</b>	<b>Response Rec'd Date</b>
Chelan County Assessors	None	Chelan County Fire Marshal	None
Chelan County Building Official	12/27/2021	Fire District #3	None
Chelan-Douglas Health District	04/02/2019	Cascade School District	None
Chelan County Public Works	04/04/2019	WA State Dept. of Archaeology	12/30/2021
Chelan County PUD	12/20/2021	Yakama Nation	None
Confederated Tribes of Colville	12/20/2021		

34. On December 27, 2021, a public comment was received from Arturo Zavala, the owner of the property directly to the north of the subject property who stated that he was unwilling to sign an Agricultural Waiver for the subject property and that his concerns are the building setbacks from an existing well on his property and the potential noise from the proposed residence on the subject property.
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 November 23, 2021.
37. A Determination of Completeness was issued on December 14, 2021.
38. The Notice of Application was provided on December 18, 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 Commercial Agricultural (AC) designation for consistency with the proposed development which permits residential uses. 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 Commercial Agricultural Lands (AC) zoning district, which permits single family dwellings and accessory structures as permitted uses. The setbacks for properties in the AC zoning district are as follows:
- Front yard – twenty-five feet from the front property line or fifty-five feet from the street centerline, whichever is greater
  - Rear yard – twenty feet from the rear property line
  - Side yard – ten feet from the side property line
  - Agricultural setback – no new dwelling unit shall be placed within one-hundred feet of a property zoned AC.
- 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 (6) Setbacks from Agriculture. No new dwelling unit shall be placed within one hundred feet of a property zoned as commercial agricultural lands (AC).
- 42.2 (A) Measurement. The entire width of any public right-of-way may be used as part of the setback area. In no case shall the setback from a public right-of-way be less than fifty-five feet from centerline or twenty-five feet from the front property line, whichever is greater. See Graphic G-2 in Appendix A.
- 42.3 (B) Administrative Modifications. The granting of a modification request must be necessary for the reasonable use of the land or building and the modification as granted by the administrator shall be the minimum necessary to accomplish this purpose. The decision of the administrator shall be appealable to the Chelan County hearing examiner.
- 42.3.1 (i) For lots/parcels legally created prior to the effective date of these provisions (September 9, 1997) the administrator may modify the required setback from land in agricultural use up to twenty percent.
- 42.4 (C) Waivers. Agricultural setbacks for dwelling units may be waived on an existing parcel within or adjacent to the commercial agricultural zoning district when a written waiver, signed by both the subject property owner and the adjacent property owner, is notarized, reviewed and approved by the department and recorded with the Chelan County auditor's office (resulting in a notice to title). Where such a waiver is implemented, the setbacks identified within this chapter shall be utilized as the minimum standards.
- 42.4.1 (i) Where a waiver has been granted, enlargement of the dwelling or request for additional dwellings, within the one-hundred-foot setback, shall require a new waiver, consistent with subsection (6)(C) of this section.
- 42.4 Hearing Examiner Finding: The applicant has obtained signatures for an Agricultural Waiver from property owners to the east, south, and west of the subject property to reduce the agricultural setbacks down to the zoning minimum in order to construct a residence on the subject property. The property owners to the North would not sign the Agricultural Waiver to reduce the 100-foot setbacks from the northern property line of the subject property. Therefore, the applicant is requesting a variance to reduce the required 100-foot agricultural setbacks from the adjacent property to the north down to the zoning minimum (10 feet) in order to construct a single-family residence.

required 100-foot agricultural setbacks from the adjacent property to the north down to the zoning minimum (10 feet) in order to construct a single-family residence.

- 42.5 Conclusion: The applicant has applied for a variance to reduce the required agricultural setbacks from the adjacent property to the north down to 10 feet in order to create a building envelope to construct a single-family residence.

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 neighbors to the north, the Zavala's, have not agreed to reduce the setbacks. The Zavala's already have their home more than 150 feet from the property line, so it doesn't make sense to have another 100 feet (since there is no existing agricultural use on the Zavala's property).

43.1.1.2 Hearing Examiner Finding: The 100-foot setback from commercial agriculture (AC) zoning only applies to residential structures. The subject property is approximately 1 acre in size and approximately 130 feet wide, and without approval of the variance to reduce the agricultural setback, the applicant would only be able to build on a swath of land that is 25 feet wide across the subject property. Therefore, the applicant is requesting to reduce the required 100-foot setback from the property to the north down to 10 feet in order to construct a single-family residence. which would give him a 105 ft. swath of land across the subject property on which to build. The parcels to the east, north, and south all have existing single-family residences and there are no agricultural uses existing on these neighboring properties.

43.1.1.3 This variance will not constitute a special privilege as property owners to the north and south have residences constructed on their properties and there are no existing agricultural uses on these properties either.

- 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: The subject property is a skinny rectangular lot.

43.1.2.2 Hearing Examiner Finding: The building area of the subject property is severely restricted due to the application of the 100 ft. agriculture setback. The subject property is approximately 130 feet wide and a residence cannot be built on it without the neighboring properties signing an Agricultural Waiver. The applicant has obtained signatures from all of the adjacent property owners except for the Zavala's, who

- 43.1.2.3 Conclusion: The plight of the applicant is due to the lot shape which creates an obstacle for building a residence without reducing the agricultural setbacks. Construction of a residence is consistent with the Comprehensive Plan.
- 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 The subject property is a skinny rectangular lot and the neighbors to the north, the Zavala's, won't sign an Agricultural Waiver.
- 43.1.3.2 Hearing Examiner Finding: Pursuant to CCC 11.30.020(6)(C), additional agricultural setbacks may be waived if a written waiver is signed by both the property owner and the adjacent property owners. The applicant approached the property owner to the north (the Zavalas) who refused to sign the waiver.
- 43.1.3.3 Pursuant to Statutory Warranty Deed recorded March 24, 2021 (AFN: 2480686), the current boundaries of the lot were legally created on May 28, 1999 when the Easley Short Plat No. 1997-77 was recorded (AFN: 2054005). Therefore, due to the property being created prior to September 9, 1999, the provision in CCC 11.30.020(6)(B) allowing the administrator to modify the required setback from land in agricultural use up to twenty percent, does apply. With a twenty percent reduction of the 100-foot setback along the north property line, however, only a 45-foot wide portion of the property would be buildable based upon the site plan provided.
- 43.1.3.4 Conclusion: The applicant's hardship was not a result of the applicant's actions as the lot, in its current configuration, existed prior to the current zoning.
- 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 I will take my trees down so I don't keep spraying near them and will not build cabins for my employees. The Zavala's already have their home more than 150 feet from the property line so it doesn't make sense to have another 100 feet (if there is no agricultural use).
- 42.1.4.2 Hearing Examiner Finding: The authorization of this agricultural setback variance would not be materially detrimental to the purposes of Title 11. The authorization of this variance would promote the goals and objectives of Title 11 and the Comprehensive Plan, which finds that residential uses are appropriate in AC zones.
- 43.1.4.3 Conclusion: The authorization of this reduced setback variance would promote residential development which per Title 11 of Chelan County



Code and the Comprehensive Plan, is an appropriate use in AC zoning. The authorization of this variance would not be injurious to property in the same district or area in which the property is located. This application is requesting approval to preserve a property right the same as is enjoyed by other properties in the area. The authorization of this variance would not be detrimental to the objectives of the comprehensive plan.

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: The application of the agricultural setback of 100 ft. to this property along the north side further restricts an already restricted building envelope.

43.1.5.2 The hardship is a result of the application of the Chelan County Code to the subject property based on site specific conditions, which does not factor in protecting farming practices.

43.1.6 The granting of a variance should not:

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

43.1.6.1.2 Applicant's Response: The property is a skinny rectangular lot and I would like to ask the County to assist me with the setback regulations.

43.1.6.1.3 Hearing Examiner Finding: The variance request is based on site-specific conditions.

43.1.6.1.4 Conclusion: The variance request is not based on illegal or nonconforming circumstances.

43.1.6.2 Be substantially based upon lack of reasonable economic return or a claim that the existing/proposed structure is too small;

43.1.6.2.1 Applicant's Response: I want to build a house on this piece of land I own. The property is a skinny rectangular lot and I would like to ask the County to assist me with the setback regulations.

43.1.6.2.2 Hearing Examiner Finding: The variance is based upon the unique shape of the lot in conjunction with the 100 ft. agricultural setback. Based upon the site plan provided, without the variance, only a portion of the property 25 feet wide would be buildable. With a twenty percent reduction of the commercial agriculture setback on the north side through an administrative modification pursuant to CCC 11.30.020(6)(B)(i), only a 45-foot wide portion of the

property would be buildable based upon the site plan provided.

43.1.6.2.3 Conclusion: The variance is not based upon the lack of reasonable economic return. Staff does agree that the topography and unique design of the lot is restrictive of where structures may be placed on the lot; however, based on the site plan provided; a smaller structure could potentially be built without the variance.

43.1.6.3 Be based on the fact that the condition for which the variance is requested, existed at the time the applicant acquired the property;

43.1.6.3.1 Agent's Response: The proposal is not based on the fact that the condition for which the variance is requested, existed at the time the applicant acquired the property, rather it is based on the fact that the condition currently exists. It is a fact that a residence is not practically buildable without the granting of this variance due to the site-specific conditions of the property and the application of Chelan County Code. The County's adoption of Title 11 in 2000 created the associated setback issues on this property. All of these conditions are completely outside the control of the control of the applicant.

43.1.6.3.2 Hearing Examiner Finding: The proposal is not based on the fact that the condition for which the variance is requested, existed at the time the applicant acquired the property, rather it is based on the fact that the condition currently exists. Pursuant to Statutory Warranty Deed recorded March 24, 2021 (AFN: 2480686), the current boundaries of the lot were legally created on May 28, 1999 when the Easley Short Plat No. 1997-77 was recorded (AFN: 2054005), which is prior to adoption of the existing code.

43.1.6.3.3 Conclusion: The lot in its current configuration existed prior to the adoption of zoning code by the County.

43.1.6.4 Result in a de facto zone reclassification;

43.1.6.4.1 Applicant's Response: None.

43.1.6.4.2 Hearing Examiner Finding: The proposal would not result in any changes to the requirements of the AC zone or change density.

43.1.6.4.3 Conclusion: This criterion does not apply.



43.1.6.5 Be substantially for the purpose of circumventing density regulations. (Res. 2002-104 (part), 7/16/02; Res. 2000-129 (part), 10/17/00).

43.1.6.5.1 Agent's Response: None.

43.1.6.5.2 Hearing Examiner Finding: The proposed variance does not affect density.

43.1.6.5.3 Conclusion: This criterion does not apply.

44. Pursuant to Chelan County Code Section 11.30.020(6)(A) "No dwelling unit shall be placed within one hundred (100) feet of a property zoned Commercial Agricultural Lands (AC)." The subject property is zoned AC and all of the neighboring properties are also zoned AC. Pursuant to Section 11.30.020(6)(A-C), setbacks from agriculture must be met or a waiver must be obtained. The unique lot configuration prevents the dwelling setback 100 feet from property line as (6)(A) requires. The Applicant has already obtained signatures for all the adjacent property owners except for the owner to the north who will not sign the waiver.
45. Based upon the foregoing facts and analysis, the Hearing Examiner concludes the proposal is consistent with Chelan County Code and Comprehensive Plan. The conditions of approval address the above-listed requirements, which have been met by the proposal.
46. An open record public hearing was held via Zoom on February 16, 2022.
47. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
48. Appearing and testifying for the Applicant was Humberto Ramirez. Mr. Ramirez testified that he was an agent for the Applicant and was authorized to appear and speak on behalf of the property owner and Applicant. He agreed with the representations in the staff report and had no objection to any of the proposed Conditions of Approval.
49. No member of the public testified at this hearing.
51. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
52. 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 21-536 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 project shall be in compliance with the Chelan County Code Title 11, in addition to all other applicable local, state and federal regulations.
2. The project shall proceed in substantial compliance with the application of record and site plan date stamped November 23, 2021.
3. Pursuant to Chelan County Code Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.
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 11.95.090, action by the Hearing Examiner is final unless within twenty-one days of issuance of the decision, an appeal to the superior court is filed in accordance with the provisions contained in Chapter 14.12, Development Permit Procedures and Administration, Title 14 of this code.
8. 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.

9. Pursuant to RCW 27.53.020, if the applicant or his agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/agent shall immediately stop work and notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.
10. 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 prior to any ground disturbing activities to arrange for a Secretary of Interior-qualified archaeologist to be present on site. If any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.
11. For all easements, Chelan County assumes no liability whatsoever for the existence, status, location, nor nature of said easements.
12. 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.