

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 2022-013)	CONCLUSIONS OF LAW AND
Riverside Cabin, LLC)	DECISION ON
)	ADMINISTRATIVE APPEAL

I. FINDINGS OF FACT

1. An Administrative Appeal was submitted regarding the denial of a short-term rental permit as an existing non-conforming short-term rental. The property in question is located at 9764 E Leavenworth Rd, Leavenworth, WA 98826.
2. The Appellant is Riverside Cabin LLC, 9764 E. Leavenworth Rd, Leavenworth, WA 98826. The Appellant's agent are Matthew S. Hitchcock and Clay Gatens of Gatens Green Weidebach PLLC.
3. The subject property is currently used as an unpermitted short-term rental. The legal description is EAST LEAVENWORTH BLOCK 6 LOT 18 LOT 2 SP 3356 0.5600 ACRES and the parcel number is 24-17-12-543-467. The zoning district is Residential Low Density 12,000 (RL 12).
4. The applicant submitted an Existing Non-Conforming Short-Term Rental Application on December 20, 2021 to continue use as a short-term rental via property manager, David Cherepy of Destination Leavenworth. Applicant was denied the permit as the property lies in the Urban Growth Area (UGA) of Leavenworth where short-term rental activity is not allowed.
5. Pursuant to Chelan County Code Section 11.88.290 (2)(C)(iv), The board of Chelan County commissioners adopts the cities of Cashmere, Chelan, Entiat, Leavenworth, and Wenatchee land use regulations, development standards and land use designations, as they apply to short-term or vacation rentals of fewer than thirty consecutive nights or days, within the county adopted unincorporated urban growth area respecting each city as it is now or is hereafter amended for the cities of Cashmere, Chelan, Entiat, Leavenworth, and Wenatchee. Provided, that any city regulation requiring acquisition of a business license is not adopted nor incorporated as a county regulation and that instead a conditional use permit may be required, and the county's review procedures in this section must control.
 - 5.1 Upon the date of the adoption of this code on September 27, 2021, any existing short-term rentals within the exterior boundaries of any city's designated urban

growth area (UGA) are required to have been in full legal compliance with any existing city codes adopted through prior resolution by the county as they applied to short-term rental uses within that UGA.

- 5.2 If a short-term rental use is operating in violation of the existing county-adopted city codes for that UGA the rental must immediately cease all operation of that use on the date of adoption of this chapter. A property operating in violation of existing city UGA land use regulations has no legal existing nonconforming status as a short-term rental.
- 5.3 All existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city.
- 5.4 New short-term rental applicants will be required to comply with the most current city regulations for short-term rental use for each city UGA, which are herein adopted and incorporated under subsection (2)(C)(iv) of this section upon adoption of this code chapter, including if any UGA code prohibits new or continued existing short-term rentals in those zones.
6. The Applicant submitted materials via property manager to apply for an Existing Non-Conforming Short-Term Rental. Materials were received December 20, 2021. The application materials were scanned and sent to Lilith Vespier, AICP in Leavenworth for joint review
7. On December 20, 2021, Chelan County Community Development received joint review response from Lilith Vespier, AICP confirming this was not legally established. The City showed no record of the short-term rental in the UGA and supported the County finding for denial.
8. Riverside Cabin, LLC became the owner of record in 2011. Zoning regulations were in place at this time for the RL12 zoning district within the UGA. A “transient accommodation” has not been a permitted use in the residential zoning districts of the city since 1989 per Ordinance 852.
9. Code 11.88.290 Subsection (2)(C)(iv)(b) states: All existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city.
10. On December 29, 2021 a letter was sent to applicant notifying them of the denial of Existing Non-Conforming Status noting that short-term rentals are not allowed in the zone in which the rental is located per LMC 18.25.030.
11. On January 12, 2021, the administrative appeal (AA-22-012) was filed with Chelan County Community Development with the associated application fees.
12. Chelan County Code Section 14.12.010: Administrative appeals.
 - 12.1 An administrative appeal to the hearing examiner shall be filed with the department within ten working days of the issuance of the decision appealed, together with the applicable appeal fee.
 - 12.2 The notice of appeal shall contain a concise statement identifying:
 - 12.2.1 The decision being appealed; (B) The name and address of the appellant and his/her interest(s) in the application or proposed development; (C) The specific reasons why the appellant believes the decision to be erroneous,

including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision is erroneous; (D) The specific relief sought by the appellant; (E) The appeal fee.

13. After due legal notice, an open record public hearing began via Zoom video conference on February 16, 2022.
14. Speaking on behalf of the Applicant/Appellant was Clay Gatens. All of Mr. Gatens statements submitted in the hearing for AA2022-012 were admitted into the record at this hearing.
15. Chelan County submitted as an exhibit 2003 correspondence between Chelan County Planning Department Director and the prior property owner identified in Finding of Fact 18.10.
16. The Hearing Examiner left the record open until February 22, 2022 for the Applicant/Appellant to submit any additional evidence regarding this submission by Chelan County. The Applicant/Appellant did not submit any additional evidence or argument.
17. No member of the public testified at the hearing.
18. Admitted into the record were the following:
 - 18.1 Denial letter of permit application for Existing Non-Conforming Short-Term Rental dated December 29, 2021;
 - 18.2 Email from Lilith Vespier, AICP with her joint review determination;
 - 18.3 Memorandum-Public Record dated July 11, 2016 relating the history of STRs in Leavenworth;
 - 18.4 AA 21-012 Application Materials;
 - 18.5 Staff Report;
 - 18.6 February 15, 2022 appeal brief by the Appellant's attorney;
 - 18.7 Declaration of Ariana Martinez dated February 15, 2022, with attached exhibits A-J;
 - 18.8 Declaration of Don Mackenzie, dated February 14, 2022;
 - 18.9 Declaration Sean Lynn, dated February 14, 2022
 - 18.10 2003 correspondence between Chelan County Planning Department Director and prior property owner, John Wolfe, and interpretation of zoning resolution issued by Assistant Director, Deanna Walter;
 - 18.11 All evidence and testimony from the open record public hearing in AA2022-012.
19. The Declarations of Ariana Martinez and Don Mackenzie do not change the Hearing Examiner's decision. Both of those persons were on the STR task force and testified as to their understanding of the Code. The Hearing Examiner rejects their interpretation of the Code to the extent they argue that the Chelan County Code was written to allow uses that are illegal and prohibited in the zone in which the STR was being illegally operated.
20. The Hearing Examiner also bases this interpretation on the obvious construction of the Chelan County Code provisions regarding short-term rentals that allow denial of an application for a STR permit for a pre-existing STR use which was allowed in the underlying

zone with a permit, but the Applicant had failed to obtain a permit within the required time limit.

21. RL 12 Zoning on this parcel existed before Appellant's ownership of property. Because short-term rentals are prohibited in RL 12 zoning, Appellant's use of property as a short-term rental was never legal.
22. If zoning had allowed short-term rentals, and the Appellant legally operated a short-term rental with all required permits during a time that zoning allowed that use, and then the zone was subsequently changed and a short-term rental was no longer allowed, then this would possibly be a legal non-conforming use because the short-term rental use was permitted when authorized under the prior existing zone designation. However, this is not the case under the facts of this appeal.
23. The Appellant has conceded that neither the Appellant, nor the Appellant's predecessor's in interest, held a permit that would authorize vacation rentals, short-term rentals, or transient accommodations at any time.
24. The Appellant's position is that the Chelan County Code allows illegal, non-conforming, uses to be granted a short-term rental permit under the current Chelan County Code.
25. The Hearing Examiner respectfully rejects this interpretation of the Chelan County Code. The Appellant's interpretation is that the Chelan County Code allows illegal, unpermitted, non-conforming uses to be allowed to obtain a short-term rental permit under the current Chelan County Code.
26. The Hearing Examiner is reinforced in his decision to reject the Appellant's interpretation in that Appellant's position would allow a short-term rental permit to be issued in a current zoning designation where the short-term vacation rental use is prohibited by the underlying zone.
27. The Hearing Examiner cannot find that it was the intent of the Chelan County Board of Commissioners to allow a use that has been operating illegally, to obtain a short-term rental permit so that the use can continue in a zone where that use is prohibited.
28. At the conclusion of the hearing, the Hearing Examiner left the record open until February 22, 2022 to allow the Appellant to submit whatever rebuttal evidence they wished to regarding Chelan County Exhibit No. 1. The Appellant elected not to submit any additional evidence.
27. 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. Chelan County Code 11.88.290 Subsection (2)(C)(iv)(b) states: All existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city.

3. CCC 11.88.290 and joint review with Leavenworth confirms that short-term rental business activity is not allowed in the RL 12 zone in which the property is located per LMC 18.25.030.
4. The Appellant's unpermitted short-term rental property is not eligible for a short-term rental permit pursuant to CCC 11.88.
5. The Appellant's request for a short-term rental permit is inconsistent with the provisions of the Chelan County Code.
6. 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 Hearing Examiner finds that the denial dated December 29, 2021 is hereby **AFFIRMED** based on the fact the Applicant did not qualify for this status based on CCC 11.88.290 and joint review with Leavenworth and finding short-term rental business activity is not allowed in the zone in which his property is located.

Dated this 8th day of March, 2022.

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.