

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

VAR 22-051

Mulhall

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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION

THIS MATTER, having come on before the Chelan County Hearing Examiner on May 18, 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 setback and the rear yard setback of the subject property for the future construction of a single-family residence. The variance request is to reduce the required 25 ft. building setback from the front line of the property to 15 ft. and the required 20 ft. building setback from the rear line of the property to 5 ft. in order to create a building envelope for a proposed single-family residence. The subject property is located within the within the Commercial Agricultural Lands (AC) zoning district.
2. The Applicants/owners are Scott and Faye Mulhall, 1700 Canyon Crest Dr., Wenatchee, WA 98801.
3. The project location is 4750 Wapato Lake Road, Manson, WA 98831.
4. The parcel number of the subject property is 28-21-22-613-205.
5. The legal description of the subject property is: Parcels "B" and "D" as delineated on Survey, Chelan County, Washington, recorded June 25, 1987 under Auditor's File No. 8706250080 in Book 21 of Surveys, page 80, being a portion of Lot 815, Highline Division No. 8, according to the Plat thereof recorded in Volume 4 of Plats, page 6.
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: From Wapato Lake Road, the parcel slopes westerly down towards the Lake Wapato Estates development and Wapato Lake. To the west, across Wapato Lake Road, these lands are currently in agricultural production. The entire lot is vacant and is mostly devoid of vegetation.
11. The parcel site size is 0.20 acres (8,712 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, south and east is zoned Rural Waterfront (RW).
14. The property to the west is Wapato Lake Road and is zoned Commercial Agricultural Lands (AC).
15. The Aquifer Recharge is exempt pursuant to Chelan County Code Section 11.82.060(2)(A).
16. The subject property is within the Rural jurisdiction of the CCSMP. Therefore, the provisions of the CCSMP do apply.
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. 5300150225A, 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.
20. 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.
21. The proposed development lies in an area with no previously recorded historic or prehistoric sites.
22. Construction would commence once an approved building permit is issued.
23. The subject property is accessed directly from Wapato Lake Road.
24. The Lake Chelan Reclamation District would provide domestic water to the subject property.
25. Power: Chelan County PUD.
26. Sanitation: A septic permit would be required for any future residence.
27. Fire protection: The property is located within Chelan County Fire District #5.
28. Noise: Similar to other residential and agricultural uses along Wapato Lake Road. The development would have to comply with CCC, Chapter 7.35 Noise and RCW 70.107.

29. Visual impacts: Similar to other residential uses; the proposed residence would be placed on the property similar to other residential structures in the area in the surround Lake Wapato Estates.
30. The Notice of Application was referred to surrounding property owners within 300 ft. (excluding 60 ft. of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on February 10, 2022 with comments due February 24, 2022. Several public comments were received. Agency comments are considered and, when appropriate, associated Conditions of Approval. The following summarizes responding agencies:

Agencies Notified	Response Date	Nature of Comment
Chelan County Building Official	2/22/2022	No comment.
Chelan County Fire Marshal		No comment received.
Chelan County Public Works	3/17/2022	Public Works has no issue with allowing the variance. The applicant shall record a "Hold Harmless" agreement with the County.
Fire District #5		No comment received.
WA State Dept. of Archaeology and Historic Preservation		No comment received.
Yakama Nation		No comment received.
Confederated Tribes of Colville	2/14/2022	The subject property was covered under a cultural report previously completed and therefore no further study is required. Implement standard clauses.
Chelan-Douglas Health District	3/7/2022	Recommends further approval; any changes to the project may require additional Health District review.
Chelan County PUD		No comment received.
Manson Community Council	2/25/2022	Recommend denial because they claim the applicant does not meet the criteria for a variance and granting one would degrade the value of the neighboring homeowners.

31. The following public comments were received:

Name(s)	Response Date	Nature of Comment
William and Jackie Cagel	2/19/2022	Request that the variance be denied as it negatively impacts privacy and potential property and don't believe the variance criteria have been met by the applicant.

Chris Beres	2/11/2022	Objects to the development of the subject property and doesn't reflect the community desires (doesn't fit Wapato Estates) and the tiny size of the lot isn't large enough to accommodate building a residence on it.
Lake Wapato Estates HOA	2/18/2022	Request that the variance be denied because: reduced setback are inconsistent with the norms of surrounding homes; the installation of a septic system would be difficult due to site constraints; a new residence would not be subject to HOA CCRs (which would be problematic); proposal could adversely affect property values; irrigation rights are a concern; homeowners were originally told that this parcel of land would not be developed; no easement has been granted to access the subject property by way of HOA property.

32. 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.
33. The application materials were submitted on January 28, 2022.
34. A Determination of Completeness was issued on February 4, 2022.
35. The Notice of Application was provided on February 10, 2022.
36. The Notice of Public Hearing was provided on May 7, 2022.
37. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Commercial Agricultural Lands (AC) for consistency with the proposed development which permits residential uses. Chelan County Comprehensive Plan, Chapter 4 page 2, states the purpose of the Commercial Agricultural Lands (AC) designation is to *"assure the long-term conservation of commercial agricultural lands; to protect and preserve the farmers ability to farm; encourage existing and future agricultural land uses as a viable land use and significant economic activity within the community; and, to protect agricultural land of long term commercial significance not already characterized by urban development from encroachment and incompatible uses. Uses appropriate for these areas include: agriculture; open space; residential; and forestry."*
38. Chelan County Code, Chapter 11.04 District Use Chart:
 - 38.1 The proposed development is associated with the AC zoning district, which allows residential and accessory structures as permitted uses.
 - 38.2 The proposed use is consistent with Chelan County Code.
39. 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:
 - 39.1 (5)(A) Front yard: twenty-five ft. from the front property line or fifty-five ft. from the street centerline, whichever is greater.
 - 39.2 (5)(B) Rear yard: twenty ft. from the rear property line.
 - 39.3 (5)(C) Side Yard: five ft. from the rear property line.

- 39.4 (6) Setbacks from Agriculture: No new dwelling unit shall be placed within one hundred ft. of a property zoned AC.
- 39.5 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 15 ft. from the front property line (or subsequently 55 ft. to 40 ft. from the street centerline). In addition, the applicant is requesting to reduce the required rear yard setback of 20 ft. to 5 ft. from the rear property line. The applicant seeks these reductions in order to create a larger building envelope for a proposed single-family residence.
- 39.6 Any future residence would be need to be accessed via Wapato Lake Road and not the private access easement owned by the Lake Wapato Estates HOA. This is because the recorded private access easement is not immediately adjacent to the property line shared by Mr. Mulhall and the HOA – there is a sliver of land owned by the HOA, approximately 5 ft., from the edge of the recorded easement to the shared property line.
- 39.7 In addition, any future residence would need to obtain an agricultural setback waiver from the land owner on the western side of Lake Wapato Road as part of an approved building permit.
- 39.8 Hearing Examiner Finding: According to the site plan of record, by reducing the front yard and rear yard setbacks, the applicant would have a building envelope approximately 54 ft. by 72 ft. (3,888 sq.ft.) on the subject property in order to construct a future residence. Without the variances, the building envelope would be approximately 29 ft. by 72 ft. (2,088 sq.ft.) according to the site plan of record.
- 39.9 The Hearing Examiner finds that a residence of a reasonable size can be constructed within a 2,088 sq.ft. building envelope.
40. Chelan County Code, Chapter 11.95 Variances - 11.95.030 Evaluation criteria:
- 40.1 No variance shall be granted unless it can be shown that all of the following conditions exist:
- 40.1.1 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.
- 40.1.1.1 Applicant's Response: Yes, 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.
- 40.1.1.2 Hearing Examiner Finding: The applicant is requesting to reduce the front yard and rear yard setbacks of the subject property in order to create a bigger building envelope for a future residence. The future residence would only be accessed via Wapato Lake Road.
- 40.1.1.3 The requested variance of the front yard and rear yard setbacks to create a building envelope for a future residence would constitute a special privilege. The Applicant can build a residence on the property without a variance.

40.1.2 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.

40.1.2.1 Applicant's Response: The plight of the applicant is due to the lot size of the subject property, of which the applicant has no control.

40.1.2.2 Hearing Examiner Finding: The lot has sufficient size to allow for a 2,088 sq. ft. building envelope without a variance. Therefore, there is no hardship or "plight" on the Applicant due to the property.

40.1.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.

40.1.3.1 Yes, the hardship asserted by the applicant is not the result of the applicant's or owner's action.

40.1.3.2 Hearing Examiner Finding: The lot is the same size as it was the date the Applicant acquired the property. The lot was created as a legal lot of sufficient size to build a residence. There is no hardship to the Applicant based on the lot size. The Applicant simply wants to build a larger residence on the lot.

40.1.4 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.

40.1.4.1 The authorization of the variance would be materially detrimental to the public welfare and safety, 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, because a residence can be constructed on the lot without the need for a variance.

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

40.1.5.1 Hearing Examiner Finding: There is no hardship because the Applicant can build a residence on the property without a variance.

40.2 The granting of a variance should not:

40.2.1 Be substantially based upon precedent established by illegal or nonconforming circumstances.

40.2.1.1 Hearing Examiner Finding: There is no evidence that the variance is based upon precedent established by illegal or nonconforming circumstances.

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

40.2.2.1 Hearing Examiner Finding: Currently, the subject property does not contain structures. The applicant indicates that the request is not based on economic return, but rather a reasonable use of the property in way similar to properties in the proximity. However, the Hearing Examiner finds that a residence can be built on the property without the need for a variance, but the Applicant desires a larger structure. The Applicant's use of the property as residential is the same use as neighboring properties.

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

40.2.3.1 Hearing Examiner Finding: The owners acquired the property in 2021. The lot has been in existence since 1999 or earlier based on recorded deeds, prior to the establishment of current zoning regulations. The size and dimensions of the lot have not changed since the Applicant acquired the property.

40.2.4 Result in a de facto zone reclassification.

40.2.4.1 Hearing Examiner Finding: The proposed variance would not change the permitted land uses.

40.2.5 Be substantially for the purpose of circumventing density regulations.

40.2.5.1 The proposed variance would not affect density.

41. An open record public hearing was held via Zoom on May 18, 2022.
42. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
43. Appearing and testifying for the Applicant was Scott Mulhall. Mr. Mulhall testified that he was Applicant and property owner. Mr. Mulhall further testified that the lot is of a unique shape and because of the shape any residence constructed on the lot would have the appearance of a mobile home. He stated the rear variance was more important than the front variance for construction purposes. He said that it is a unique sized lot with lines that create unique angles and problems with construction. There was no testimony that construction of a residence was impossible due to site characteristics, without the requested variance.
44. Testifying from the public were the following individuals:
 - 44.1 Carl Blum. Mr. Blum testified that if the variance was granted there would only be one small area for septic. He further reminded the Hearing Examiner that lot coverage was limited to 35% maximum.
 - 44.2 Chris Beres. Mr. Beres testified that he lives on the rear property line of the subject property. The Applicant's property looks down on them. The rear yard setback is

necessary to provide them some semblance of privacy. He also had concerns about the emergency access to the property.

44.3 Kathleen Blum. Ms. Blum testified on behalf of the Manson Community Council. She had concerns about visual impacts in that the structure would not look the same as existing Wapato Estate Homes. She also indicated that the front yard setbacks, even without a variance, are much shorter than the average home setback for the Wapato Estates properties.

44.4 William Cagel. Mr. Cagel also lives at the rear property line of the Applicant's property. He had concerns with lot coverage and stated that the variance could not be granted simply because the Applicant wishes to build a larger residence. D

44.5 Kari Sorenson. Ms. Sorenson also testified on behalf of the Manson Community Council. She testified that the limitation regarding the size of the lot was obvious when the lot was created and when it was purchased by the Applicant, and therefore, no variance should be allowed.

45. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.

46. 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 not consistent with the intent, purposes and regulations of the Chelan County Code and Comprehensive Plan.
3. A home may be built that conforms to the standards specified in the Chelan County Code without a variance.
4. The proposed variance would be contrary to the intent or purposes and regulations of either the Chelan County Code or the Comprehensive Plan.
5. This proposal does not comply with Comprehensive Plan, the zoning code and other land use regulations.
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 22-051 is hereby **DENIED**.

Dated this 23rd day of May, 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.