

SHORELINE MANAGEMENT PERMIT

ACTION SHEET

Application #: SV 2022-230

Administering Agency: Chelan County Department of Community Development

Type of Permits: ☒ Shoreline Variance Permit

Action: ☒ Approved ☐ Denied

Date of Action: June 15, 2022

Date Mailed to DOE/AG

Pursuant to Chapter 90.58 RCW and the Shoreline Master Program of Chelan County, the following permit is hereby approved:

William Buckley and Tammy O'Connor
3780 HWY 97A
Chelan, WA 98816

This is an application for a shoreline variance submitted to reduce the shoreline setbacks to approximately 12-15 ft. from the OHWM of Lake Chelan for the construction of a proposed pool. The required setback from the OHWM is 50 ft. but the applicant was given guidance from staff that the setback is 5 ft. which is incorrect. The subject property is located within the R-L Single-Family Residential District in the Urban Growth Area of the City of Chelan and holds an 'urban' shoreline environment designation for Lake Chelan, a Shoreline of Statewide Significance.

Upon the following property: 3780 HWY 97A, Chelan, WA.

Within 200 feet of Lake Chelan and/or its associated wetlands.

The project would be within a shoreline of statewide significance (RCW 90.58.030). The project will be located within an urban shoreline designation and is classified as a Shoreline of Statewide Significance. The subject property is located within the R-L Single-Family Residential District in the Urban Growth Area of the City of Chelan to WAC 173-20-100.

The following Shoreline Master Program provisions are applicable to this development: Sections 3, 4, 5, 6, and 7.

All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns, and successors.

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 CCC Section 11.95.040, the construction shall be in conformance with the site plan of record, dated October 5, 2021.
2. Pursuant to CCC Section 11.95.040 and the International Building Code, Section 105, the applicant shall obtain a building permit for the construction of the proposed pool.
3. Pursuant to CCC Section 11.88.190, no construction activity shall be permitted within 1,000 ft. of an occupied residence between the hours of 10 p.m. to 7 a.m.
4. Pursuant to comments received from DAHP the subject property is located within an area of high probability of encountering cultural resources within the proposed development area; however, due to the small footprint of the development, DAHP is not requesting a cultural resource survey at this time.
5. Pursuant to RCW 27.53.020, if the applicant or their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/ agent shall immediately notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.
 - 5.1 An inadvertent discovery plan must be submitted with the building permit application and kept onsite during all land disturbing activities.
6. If this development is not occupied by the property owner/builder, under the Model Toxics Control Act, the development is required to conduct soil sampling and submit results to the Washington State Department of Ecology. The Department of Ecology does not require cleanup of single residential development that would be occupied by the builder.
7. A Habitat Management and Mitigation Plan (HMMP) that includes mitigation sequencing consistent with CCSMP Section 4.2B and CCSMP Appendix B Critical Areas Section 6.5.6 that shows compensatory mitigation.
8. 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.
9. Pursuant to CCC Section 11.95.060, the granting of a variance and the conditions set forth runs with the land; compliance with the conditions of the variance is the responsibility of the current owner of the property, whether that is the applicant or a successor.
10. Pursuant to CCC Section 11.95.070, upon final action of the hearing examiner as set forth in the provisions of this chapter, the department of building/fire safety and planning shall not accept filing of an application for substantially the same matter within one year from the date of the final denial of the application.
11. 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.

12. For all easements, Chelan County assumes no liability whatsoever for the existence, status, location, nor nature of said easements.
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.

FINDINGS OF FACT

1. The applicants/owners are William Buckley and Tammy O'Connor, 3780 HWY 97A, Chelan, WA 98816.
2. The project location is 3780 HWY 97A, Chelan, WA.
3. The parcel number for the subject property is 27-22-16-130-075.
4. The legal description for the subject property is: Parcel A of SS# 2314 recorded under Book 11, Page 8. The subject property is 0.75 acres.
5. The subject property is located in Chelan County, within the City of Chelan's Urban Growth Area.
6. The Comprehensive Plan designation and zoning for the subject property is Single-Family Residential (R-L).
7. A shoreline substantial development was submitted on November 5, 2021 for a pier, boatlift, PWC lift, stairs and a mooring buoy. SDP 21-519. A shoreline administrative determination was submitted on November 12, 2021, to reduce the shoreline buffer from 50 ft. to 25 ft. SAD 21-527. A new 4-bedroom 4 bath single family residence to include: 4,102 sq. ft. was issued on December 8, 2021. BP 210944.
8. The proposed parcel is relatively flat and vegetated with lawn grass
9. Property to the north: Lake Chelan.
10. Property to the south: Special Use District (SUP).
11. Property to the east and west: Single Family Residential District (R-L).
12. The Aquifer Recharge form was completed with the variance application. Pursuant to Chelan County Code (CCC), Section 11.82.060(2)(A), residential dwelling units and their accessory uses are exempt from the aquifer recharge area regulations under this chapter.
13. According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the subject property does contain WDFW Priority Habitat Species. Therefore, the provisions of CCC 11.78 as it relates to priority habitat would apply.

14. The subject property is located within 200 ft. of the Lake Chelan, a shoreline of statewide significance. Therefore, the provisions of the Chelan County Shoreline Master Program (CCSMP) would apply.
15. Pursuant to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property does not contain identified wetlands. Therefore, the provisions of Chelan County Code Chapter 11.80 Wetland Areas Overlay District do not apply.
16. According to the Federal Emergency Management Agency, FIRM Panel No. 5300150225A, the subject property is not located within the floodplain. Therefore, the provisions of CCC 11.84 and 3.20 would not apply.
17. The County GIS data map indicates no known geologically hazardous conditions on the subject property. Therefore, the provisions of CCC 11.86 would not apply.
18. Pursuant to RCW 27.53.020, if the applicants or their 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.
19. Pursuant to WAC 197-11-800(6)(e), variance applications that are based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surrounding and do not result in a change of land use or density are categorically exempt from the environmental review process.
20. Construction would begin upon issuance of all necessary permits and within the appropriate work window.
21. The subject property has frontage on HWY 97A. The proposed single-family residence and appurtenant structures would be accessed from HWY 97A.
22. Domestic water would be provided by Lake Chelan Reclamation District.
23. Power is provided by Chelan County PUD.
24. Sanitation would be provided by Lake Chelan Reclamation District. The proposed septic system appears to be located outside of the wetlands and modified buffers.
25. The subject property is located within the boundaries of Fire District #7.
26. Noise from construction, typically associated with a residential construction. Construction noise is regulated by CCC, Section 11.88.190, which states no construction activity shall be permitted within one thousand feet of an occupied residence between the hours of ten pm to seven am.
27. Being as the proposed development is to be residential, the visual impact is anticipated to be minimal as the surrounding properties are developed residentially.
28. The application was submitted on May 26, 2022.
29. The Determination of Completion was issued on May 26, 2022.
30. The Notice of Application was issued on May 28, 2022.
31. The Notice of Public Hearing was issued on May 28, 2022.

32. The Notice of Application was referred to surrounding property owners within 300' (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on May 28, 2022 with comments due June 11, 2022. Agency comments are considered in this decision and, when appropriate, associated recommended Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received.

Agencies Notified	Response Date
WA Department of Ecology	June 10, 2022
Department of Archaeology & Historic Preservation	June 10, 2022
Confederated Tribes of the Colville Reservation	June 8, 2022
WA State Dept of Fish & Wildlife	June 10, 2022
Yakama Nation	No Comments
Chelan County Fire Marshal	
Chelan County PUD	
Lake Chelan School District	
Fire District No. 7	
Chelan County Building Official	

33. The City of Chelan Comprehensive Plan Land Use Element has not been adopted by Chelan County and was therefore not reviewed for this decision.
34. Chelan County Code 11.95.030: Variance Evaluation Criteria:
- 34.1 No variance shall be granted unless it can be shown that all of the following conditions exist:
- 34.1.1 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.
- 34.1.2 Hearing Examiner Finding: The variance would allow for the development of a swimming pool on a legally established residential lot. The proposed residential development would be similar to the existing residences and appurtenances on the surrounding properties.
- 34.1.3 Conclusion: The proposed development is similar to the residential development on the surrounding properties.
- 34.2 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.
- 34.2.1 Hearing Examiner Finding: The plight of the applicant is due to the physical characteristic of the subject property and existing development. While doing

feasibility for the single-family residence currently being constructed the applicant received incorrect setback confirmation from Chelan County Community Development staff. Community Development staff indicated that the setback from the lake was only 5 ft. Based on that information the applicant shifted the house closer toward the lake with the intention of building a pool approximately 12-15 ft from the OHWM.

- 34.2.2 Conclusion: The variance request is based on the shoreline buffer located on the parcel and the incorrect setbacks information given to the applicant by Chelan County Community Development staff.
- 34.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
 - 34.3.1 Hearing Examiner Finding: The hardship asserted by the applicant appears to be not by their own actions. The applicants were given shoreline setback information by Chelan County Community Development staff that was incorrect. Once they were given confirmation regarding the setback the applicants revised the location of the single-family residence creating only one possible location for the proposed pool. The applicants are proposing a 12-15 ft. setback from the OHWM rather than the 5 ft. setback that they were given by staff.
 - 34.3.2 Conclusion: The hardship does not appear to be of the owners' actions.
- 34.4 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.
 - 34.4.1 Hearing Examiner Finding: The proposed development would not create any additional public welfare or safety issues. The swimming pool would meet all building code requirements and would conform to other required sections of code to the greatest extent possible.
 - 34.4.2 Conclusion: As conditioned, the proposal would not be materially detrimental to the public welfare and safety or injurious to property in the neighborhood.
- 34.5 The hardship asserted by the application results from the application of this title to the property.
 - 34.5.1 Hearing Examiner Finding: The ultimate hardship asserted by this application is the incorrect shoreline buffer setback given to the applicant at the time of feasibility for the single-family residence.
 - 34.5.2 Conclusion: The hardship appears to be a result of the application of the Chelan County SMP and incorrect setbacks given to the applicant by Chelan County Community Development staff.
- 34.6 The granting of a variance should not:
 - 34.6.1 Be substantially based upon precedent established by illegal or nonconforming circumstances.
 - 34.6.1.1 Hearing Examiner Finding: The variance request is based on the property's encumbrances due to the application of the CCSMP. The parcel was legally established pursuant to CCC Section 14.98.1090

definition of legal lot of record being as it was created from a short plat.

34.6.1.2 The hardship stems from the shoreline and the associated buffers.

34.6.1.3 Conclusion: The proposed variance appears to be based on the application of the Chelan County SMP as it relates to the associated shoreline buffers and incorrect information given to the applicant by Chelan County Community Development staff.

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

34.6.2.1 Hearing Examiner Finding: The applicant indicates that the request is not based on economic return nor the existing/proposed structure is too small it is specifically based upon the incorrect setback information given to the applicant at the time of building.

34.6.2.2 Conclusion: There is no claim of economic return. The reduced buffer would provide a building area for a proposed pool.

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

34.6.3.1 Hearing Examiner Finding: The owners acquired the property on July 9, 2021. The condition that the variance is requested regarding did not exist at the time the applicant acquired the property.

34.6.3.2 Conclusion: The hardship was created when the applicant was given incorrect setback information by Chelan County Community Development staff.

34.6.4 Result in a de facto zone reclassification.

34.6.4.1 Hearing Examiner Finding: The proposed variance does not change the permitted land uses.

34.6.4.2 Conclusion: This does not apply.

34.6.5 Be substantially for the purpose of circumventing density regulations.

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

34.6.5.2 Conclusion: This does not apply.

35. CCSMP Section 7.8 Review Criteria for Variance Permits - CCSMP Section 7.9.1 Purpose and Review Process. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Shoreline Master Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Shoreline Master Program would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of the SMP are prohibited.

36. After a Shoreline Variance application has been approved by the County, the County shall submit the permit to Ecology for Ecology's approval, approval with conditions, or denial. Ecology shall review the file in accordance with WAC 173-27-200.

37. 7.8.2 Review Criteria - Shoreline Variances may be authorized, provided the applicant can demonstrate compliance with the following criteria or as thereafter amended in WAC 173-27-170. Applicants are encouraged to consider the options, such as buffer averaging or buffer reduction and optimally implement mitigation sequencing prior to applying for a Shoreline Variance.
- 37.1 General provisions. Shoreline Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020.
- 37.1.1 Hearing Examiner Finding: RCW 90.50.020 prioritizes alterations of the natural shoreline condition in limited instances when authorized for the construction of single-family residences. The strict implementation of the CCSMP affects the ability of the applicant to develop a legal lot of record with a single-family residence as allowed within the zoning designation and consistent with Chelan County Code, the Chelan County Comprehensive Plan and RCW 90.50.020. The property has been developed per the building permit for the single-family residence currently in construction although a granting of a variance would be necessary for the proposed pool due to the shoreline and the associated buffers.
- 37.1.2 Conclusion: The Hearing Examiner finds that the denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020.
- 37.2 Shoreline variances landward of the OHWM. Shoreline Variance permits for development and/or uses that will be located landward of the OHWM, as defined in RCW 90.58.030(2)(c), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant demonstrates affirmatively all of the following:
- 37.2.1 How would the strict application of the bulk, dimensional or performance standards set forth in this SMP preclude or significantly interfere with reasonable use of the property?
- 37.2.2 Hearing Examiner Finding: The SMP allows for residential structures and their appurtenances to be build within the shoreline buffer with a shoreline administrative determination. During feasibility for the single-family residence Chelan County Community Development staff gave the applicant incorrect shoreline buffer setback information. Due to that incorrect information the applicant revised the location of the single-family residence creating only one feasible location for the proposed pool.
- 37.2.3 Conclusion: The applicant is requesting to construct a pool within the 'urban' shoreline designation.
- 37.3 How is the hardship described in Section 7.8.2.B.1 above specifically related to the property, and is the hardship the result of unique conditions such as irregular lot shape, size, or natural features and the application of this SMP, and not for example from deed restriction or the applicant's own actions?
- 37.3.1 Hearing Examiner Finding: The hardship is not a result of topography of the parcel, geographic location or previous land use decisions. The hardship specifically detailed in this variance is the result Chelan County Community Development staff giving the applicant the incorrect shoreline buffer setback of 5 ft from the OHWM rather than the correct setback of 50 ft.

- 37.3.2 Conclusion: The hardship appears to be specifically related to incorrect information given to the applicant by staff.
- 37.4 How is the design of the project compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this SMP, and will the project design not cause adverse impacts to the shoreline environment?
- 37.4.1 Hearing Examiner Finding: The shoreline environment designation is 'urban', which permits residential uses and structures.
- 37.4.2 Properties in the vicinity are developed with single-family residences, garages and other residential structures. Many residential properties along this section of shoreline contains similar residential structures.
- 37.4.3 Conclusion: As conditioned, the development would not cause adverse impacts to the shoreline environment. The development would be compatible with the authorized uses in the zoning designation, comprehensive plan, and SMP.
- 37.5 How will the variance not constitute a grant of special privilege not enjoyed by the other properties in the area?
- 37.5.1 Hearing Examiner Finding: The other properties in the area are developed with single-family residences and accessory structures of similar nature and size as the proposed development. Due to the incorrect information Chelan County Community Development staff gave the applicant there is no other location that the proposed pool could be possibly placed.
- 37.5.2 Conclusion: The requested variance would not constitute a grant of special privilege not enjoyed by other properties in the area.
- 37.6 How is the variance requested the minimum necessary to afford relief?
- 37.6.1 Hearing Examiner Finding: After the confirmation of the 5 ft. setback from the OHWM the single-family residence location was revised creating no alternate location for the proposed pool and the location of the proposed pool is at the minimum necessary to afford relief.
- 37.6.2 Conclusion: The proposed variance would allow the applicant to have some of the same residential appurtenances as properties up and down lake.
- 37.7 How will the public interest suffer no substantial detrimental effect?
- 37.7.1 Hearing Examiner Finding: The proposed pool is to be constructed on private property.
- 37.7.2 Conclusion: The proposed development is for private use, on private property. The public interest would not suffer substantial detrimental effect.
38. The applicant is requesting a shoreline variance to reduce the shoreline buffer from 50 ft to 12-15 ft to accommodate a proposed pool. While doing feasibility for the single-family residence, currently under construction, the applicant received guidance from Chelan County Community Development staff stating that the setback from the OHWM was 5 ft. With that setback confirmed several times the applicant revised the location of the single-family residence. When the applicant came in to submit for the pool permit they found out that the 5 ft setback was incorrect. But when the single-family residence location was revised there was only one possible location the pool

- could be located and that is approximately 12-15 ft from the OHWM, thus the application for the variance.
39. Overall, the development fits with the character of the development on the surrounding properties and is compatible with the uses permitted in the urban shoreline environmental designations.
 40. An open record public hearing after due legal notice was held via Zoom video conferencing on June 15, 2022.
 41. Appearing and testifying on behalf of the applicant was William Buckley. Mr. Buckley testified that he was the property owner and applicant. Mr. Buckley indicated that the applicant had no objection to any of the proposed Conditions of Approval, and agreed with the representations contained in the staff report.
 42. No member of the public testified at this hearing.
 43. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
 44. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

CONCLUSIONS OF LAW

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 Hearing Examiner has authority to render this Decision.
2. Referral agency comments were received and considered in the review of this proposal.
3. The site of the subject proposal is in the Chelan County Comprehensive Plan R-L Single-Family Residential land use designation. As described, the proposal is consistent with the Chelan County Comprehensive Plan.
4. As conditioned, the subject proposal is consistent with the Chelan County Code, Title 11.
5. Environmental and Critical Areas review has been completed. As conditioned, the proposal does not have negative impacts on critical areas which cannot be mitigated.
6. The development is consistent with the provisions of the SMP, WAC and CCSMP.
7. The authorization of the shoreline permits will not be materially detrimental to the purposes of the Revised Code of Washington, the Washington Administrative Code, the Chelan County Shoreline Master Program, the Chelan County Comprehensive Plan, the Chelan County, or not be otherwise detrimental to the public interest.
8. Subject to the Conditions of Approval, the project design is consistent with the Chelan County Shoreline Master Program requirements.
9. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

This Shoreline Variance Permit is granted pursuant to the Shoreline Master Program of Chelan County, as amended, and nothing in this permit shall excuse the applicant from compliance with any other federal, state, or local statutes, ordinances, or regulations applicable to this project, but not inconsistent with the Shoreline Management Act of 1971 (Chapter 90.58 RCW).

This Shoreline Variance Permit may be rescinded pursuant to RCW 90.58.140(7) in the event the permittee fails to comply with the terms and conditions hereof.

CONSTRUCTION PURSUANT TO THIS SHORELINE VARIANCE PERMIT SHALL NOT BEGIN NOR IS AUTHORIZED UNTIL TWENTY-ONE (21) DAYS FROM THE DATE OF FILING AS DEFINED IN RCW 90.58.140(6) AND WAC 173-14-090, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a)(b)(c).

Substantial progress toward construction of the project for which this permit has been granted must be accomplished within two (2) years of the filing date of this permit. Authorization to conduct development activities granted by this permit shall terminate five (5) years from the filing date of this permit.

Approved this 16th day of June, 2022.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the “date of receipt” as defined by Washington Law to file a petition for review with the Shorelines Hearings Board (for the shoreline permit and shoreline conditional use permit) as provided for in RCW 90.58.180 and Chapter 461-08 WAC, the rules of practice and procedure of the Shorelines Hearings Board.

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.

**THIS SECTION FOR DEPARTMENT OF ECOLOGY USE ONLY IN REGARD TO A
CONDITIONAL USE AND/OR VARIANCE PERMIT**

Date received by the Department _____

Approved _____

Denied _____

This conditional use/variance permit is approved / denied by the Department pursuant to Chapter 90.58
RCW.

Development shall be undertaken pursuant to the following additional terms and conditions:
